

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1699 of 2019

In

Civil Writ Jurisdiction Case No.5874 of 2011

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Bibeka Nand Thakur Son of Late Parma Nand Thakur, Resident of Radha Rani Sinha Road, Rodda Colony, Adampur, Bhagalpur, P.S.- Adampur, Town and District- Bhagalpur.

... .. Appellant/s

Versus

1. The UCO Bank through its Chairman and Managing Director, having its Head Office at- 10, B.T.M. Sarani, Kolkata- 700001.
2. The Assistant General Manager-cum-the Appellate Authority, UCO Bank Zonal Office, S.K. Tarafdar Road, Adampur, Bhagalpur namely Amit Mitra.
3. The Chief Officer-cum-the Disciplinary Authority, UCO Bank, Zonal Office, S.K. Tarafdar Road, Adampur, Bhagalpur namely Mr. A.K. Verma.
4. The Enquiry Officer namely Dr. P.K. Mishra, the then Senior Manager, UCO Bank, Baunsi Branch, District- Banka.
5. Mr. Indrajeet Narayan Singh, the then Branch Manager, Birbanna Branch, now at Zonal Office of UCO Bank, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Dinu Kumar, Advocate
Mrs.Ritiak Rani, Advocate
For the Respondent/s : Mr.Shivendra Kumar Roy, Advocate
Mrs.Sheela Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-09-2024

The appellant has assailed the order dated 27.03.2019 passed in CWJC No. 5874 of 2011. The appellant was appointed as a Peon and promoted to the post of clerk. He was holding the post of Head Cashier, Birbanna, Brahamapur Branch situated in the District of Bhagalpur. Branch Manager has filed a complaint



on 07.03.2009 alleging that appellant has abused in a filthy language in not responding to certain oral instructions addressed to the appellant. Such filthy language was uttered to the Branch Manager in the presence of Sri Dayanand Poddar and Sri Kailash Mehta. Charge-memo was stated to have been issued on 30.06.2009. On 13.07.2009 appellant had furnished his reply to the extent that the alleged allegations are false and unnecessarily appellant was implicated in a disciplinary proceedings in the light of the alleged fact that Disciplinary Authority – Mr. A.K.Verma. In this regard, appellant has specifically written a letter to Chairman-cum-Managing Director, UCO Bank, Kolkata on 05.10.2019, i.e., before commencement of disciplinary proceedings.

2. The Chairman-cum-Managing Director has not taken any action on the appellant grievance insofar as change of Disciplinary Authority - Sri A.K.Verma, Chief Manager, UCO Bank, Zonal Office, Bhagalpur (Bihar) either accepting or rejecting. The appellant has made serious allegations against Sri A.K.Verma as is evident from Annexure-12 to the writ petition dated 05.10.2009. In all fairness, the Chairman-cum-Managing Director or competent authority should have either accepted or rejected the version of the appellant. On the other hand, they have ignored such alleged serious allegations. Further, we have noticed that appellant had requested for appointment one Mr.



N.M.Choudhary, Organizing Secretary of INTU as defense assistant. This was objected by the presenting officer and grievance of the appellant was rejected. Similarly, he intends to appoint Mr. Rajkumar Jha, staff member of the Punjab National Bank as a defense assistant and it was also rejected. Thereafter, one Sri Omkar Prasad Singh, Advocate was suggested by appellant and it was also rejected. These rejections are by the Inquiring Officer. Para 12 of Memorandum of Settlement on Disciplinary Action Procedure for Workmen between Indian Banks' Association and Workmen Union dated 10.04.2002 notified on 21.06.2002, reads as under:-

“ 12. The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended -

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a



registered trade union of employees of the bank in which he is employed: OR

(ii) at the request of the said union by a representative of the state federation or an India Organisation to which such union is affiliated; OR

(iii) with the Bank's permission, by a lawyer.

He shall also be given ashearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry or initiation of such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him 'he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc.

(c) la awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

[Underlined Supplied]



(d) If the representative defending the employee is an employee of the same bank at an outstation branch within the same State, he shall be relieved on special leave (on full pay and allowances) to represent the employee and be paid one return fare. The days of fare to which he will be entitled would be the same as while travelling on duty. In case of any adjournment at the instance of the bank/enquiry officer, he may be asked to resume duty and if so, will be paid fare for the consequential journey. He shall also be paid full halting allowance for the period he stays at the place of the enquiry for defending the employee as also for the days of the journeys which are undertaken at the bank's cost.

Explanation:

'State' for the purpose, shall mean the area which constitutes a political State, but this explanation will not apply to SBI.

(e) An enquiry need not be held if :

(i) the bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct,

(ii) the employee makes a voluntary admission of his guilt in reply to the aforesaid show cause notice; and

(iii) the misconduct is such that even if proved the bank does not intend to award the punishment of discharge or dismissal.

However, if the employee concerned requests a hearing regarding the nature of punishment, such a hearing shall be given.

(f) An enquiry need not also be held if the employee is charged with minor misconduct and the punishment proposed to be given is warning or censure. However,

(i) the employee shall be served a show cause notice advising him of the misconduct and the evidence on which the charge is based; and

(ii) the employee shall be given an opportunity to submit his written statement of defence, and for this purpose has a right to have access to the documents and material on which the charge is based;



(iii) if the employee requests a hearing such a hearing shall be given and in such a hearing he may be permitted to be represented by a representative authorised to defend him in an enquiry had such an enquiry been held.

(g) Where an employee is charged with a minor misconduct and an enquiry is not held on two previous occasions, an enquiry shall be held in respect of the third occasion.”

3. It is not the function of the Inquiring Officer insofar as recognition of defense assistant to be appointed by CSE. Assuming that Inquiring Officer is empowered to reject N.M.Choudhary and Raj Kumar Jha insofar as Omkar Prasad Singh, Advocate is concerned. Clause 12A(iii) with the Bank's permission by a lawyer. Inquiring Officer cannot be a Bank he cannot be treated as bank. On the other hand, Disciplinary Authority was required to examine whether appellant is permitted to engage services of Sri Omkar Prasad Singh, Advocate or not? On the other hand, Inquiring Officer proceeded to reject appellant's request for appointing him as defense assistant. In all fairness Inquiry Officer should have referred the matter to disciplinary authority to decide appellant's request for defense appointment.

4. Taking note of alleged allegations levelled against A.K.Verma and in not permitting the appellant to engage services of defense assistance of his choice read with Para 12 cited (supra). It is *prima facie* evident that Disciplinary Authority- A.K.Verma is



biased against the appellant. Annexure-12 to the writ petition dated 05.10.2009 insofar as change of the Disciplinary Authority – Sri A.K.Verma is concerned. Advance copy has been marked to the Disciplinary Authority – Sri A.K.Verma. In all fairness, Sri A.K.Verma should have recused in the present matter to discharge the duties of the post of Disciplinary Authority having regard to the alleged allegations. Assuming that he intends to continue as Disciplinary Authority in that event he should have responded to the alleged allegation letter dated 05.10.2009 *vide* Annexure-12 to the writ petition and that too when copy has been marked in advance to the Disciplinary Authority – Sri A.K.Verma. In fact, appellant has made serious allegations against Sri A.K.Verma not only about demand of illegal gratification insofar as regulating Travelling Allowances and other allowances.

5. Further, Smt. Malti Devi is stated to be a complainant against Sri A.K.Verma in which case appellant is one of the witnesses. These are all the matters which have been highlighted in the letter dated 05.10.2009 and the same has not been examined by the Chairman-cum-Managing Director or by the Disciplinary Authority – Sri A.K.Verma to the extent of change in Disciplinary Authority insofar as charge levelled against the appellant is concerned. This has not been appraised by the learned Single Judge. No doubt, appellant should have questioned the validity of



continuation of disciplinary proceedings by Sri. A.K.Verma. Here we have to notice that appellant was initially appointed as Peon and Clerk. Having regard to his status and his frankness in approaching the Chairman-cum-Managing Director of the Bank making allegations and Chief Manager – Sri A.K.Verma. In all fairness the Chairman-cum-Managing Director of the Bank should have either accepted or rejected the appellant's grievance *vide* Annexure-A/12 to the writ petition.

6. The issue of biasness has not been examined in appropriate manner by the learned Single Judge. The cited decision by learned Single Judge is relevant in respect of facts and circumstances. In the present case, alleged charge is that appellant has abused the officer in a filthy language for which major penalty has been imposed namely compulsory retirement when appellant had still 10 years of service.

7. CWJC No. 5874 of 2011 was not admitted for hearing. No doubt after arguing for sometime before the learned Single Judge appellant counsel submitted that matter is required to be relegated to CGIT which is statutory remedy available against the compulsory retirement. However, the same was not allowed by the learned Single Judge on the score that after arguing for sometime when the Court is against the appellant and to overcome such decision learned counsel for the appellant



submitted that appellant has statutory remedy before the CGIT. In a non-admitting case Court can relegate the matter to the statutory remedy. Even on this point learned Single Judge should have permitted the appellant to invoke the remedy before the CGIT against the compulsory retirement.

8. At this distance of time, it is not proper for this Court to permit the appellant to invoke the remedy before the CGIT. In the light of these facts and circumstances, the appellant has made out a case so as to interfere with the compulsory retirement penalty only on the issue of disproportionate to the charge. It is not a case of mis-appropriation of money and further when the appellant has specifically contended that Disciplinary Authority was biased and further Inquiring Officer has no vested power to decline to engage services of Advocate. In other words, such declining of engaging advocate as a defense assistant should have been examined by the bank namely Disciplinary Authority in the light of Para 12 of the Memorandum of Settlement on Disciplinary Action Procedure for working workmen and Indian Bank Association and Workmen Union dated 10.04.2002 notified on 21.06.2002.

9. Having regard to the time spent by the appellant before judicial forum from 2011 to this day it is not appropriate to remand the matter to the Disciplinary Authority to commence the inquiry from the defective stage.



10. Accordingly, compulsory retirement order dated 30.03.2010 and order of learned Single Judge dated 27.03.2019 passed in CWJC No. 5874 of 2011 are sets aside. Letters Patent Appeal No. 1699 of 2019 stands allowed in part. In the above analysis of the matter, the concerned respondents are hereby directed to settle monetary benefits to the extent of 50% backwages from the date of imposition of compulsory retirement till in the normal course retirement date. The aforementioned calculation shall be undertaken by the concerned authority and proceed to settle the same within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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