

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2414 of 2020

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Suresh Kumar Choubey Son of Late Rajendra Choubey, Resident of Mohalla-Prabhunath Nagar, Sadha, Police Station-Chapra Muffasil, District-Saran at Chapra

... .. Petitioner/s

Versus

1. The Chairman, Uttar Bihar Gramin Bank
2. The General Manager, Uttar Bihar Gramin Bank, Muzaffarpur.
3. The Regional Manager, Uttar Bihar Gramin Bank, Chapra.
4. The Regional Manager, Uttar Bihar Gramin Bank, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Ram Binod Singh, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 01-04-2024

Heard Mr. Bindhyachal Singh, learned Sr. Counsel for the petitioner assisted by Mr. Ram Binod Singh, learned counsel and learned counsel for the respondent- Uttar Gramin Bank.

2. The present writ petition has been filed for the following relief/s :-

i) For issuance of the writ in the nature of certiorari or any other appropriate writ for quashing of the memo of charge contained in letter no. HO/DAD/11/18-19 No.-383 dated 20.12.2018 whereby the departmental proceeding was initiated against the petitioner after the lapses of almost 11 years from the date of sanctioning of loan on the ground of the vague and unspecific charges.

ii) For issuance of writ in the nature of certiorari or any other appropriate writ for



quashing of the finding of the enquiring authority/enquiry report dated 13.06.2019 contained in letter no. HO/DAD/12/19-20 No.-135 dated 29.05.2019, whereby erroneously the enquiring authority has come to the abrupt conclusion that the charge no. 1 against the petitioner is found to be proved.

iii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order contained in letter no. HO/DAD/12/19-20 No.-186 dated 01.08.2019 issued under the signature of Disciplinary Authority, whereby the petitioner has been subjected to consolidated punishment of "Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 39(1) (b) (v) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010 read with Uttar Bihar Gramin Bank Service (Amendment) Regulations, 2013." (hereinafter referred to as "Regulations" only).

iv) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the administrative order contained in letter no. HO/DAD/12/19-20 No.-187 dated 01.08.2019 passed by the General Manager, Uttar Bihar Gramin Bank (hereinafter referred to as "Bank" only), Muzaffarpur, whereby the petitioner has been awarded the penalty of "Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 39(I) (b) (v) of



Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010 read with Uttar Bihar Gramin Bank Service (Amendment) Regulations, 2013."

v) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 23.10.2019 contained in letter No. HO/DAD/12/19-20 No.-322 dated 23.10.2019 passed by the Chairman-cum-Appellate Authority, Uttar Bihar Gramin Bank, Muzaffarpur, whereby the appeal preferred by the petitioner against the order of the disciplinary authority, has been rejected by the Appellate Court of the Bank.

vi) For issuance of writ in the nature of mandamus or any other appropriate writ for necessary direction upon the respondents to pay all consequential benefit including the retiral dues as the petitioner has already superannuated on 31.12.2018.

vii) For issuance of any other appropriate writ or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

3. Learned Sr. Counsel for the petitioner submits that the petitioner was posted as Branch Manager of Jhauwan Branch under the Regional Office, Chapra in Scale-1 from 2004-2010. During the said period, the petitioner sanctioned certain loans after obtaining certain immovable properties of the borrowers under equitable mortgage. In addition to that, the



petitioner had also obtained certain LIC bonds from the borrowers as additional safety measures. The petitioner was promoted to Scale-II in the year 2010 and was transferred to Malmaliya Branch in the district of Siwan and, thereafter, to Puchhari Branch under the regional office Chapra.

4. Learned Sr. Counsel for the petitioner further submits that for his work of distributing loan, letter of appreciation was granted to him and on the basis of his good performance, promotion in Scale-II was granted. But, at the fag end of his career, when he was going to superannuate on 31.12.2018, a memo of charge dated 20.12.2018 has been served upon him with allegation that he distributed loans under the various schemes against the LIC policy bonds taken as surety without ascertaining the genuineness of the policy bond and without estimation, with the concerned LIC office. It was alleged that seven (7) LIC bonds out of 43 bonds taken as security were found fake/forged and the rest 36 policy bonds were not assigned, in favour of the bank due to which, the petitioner caused a loss to the tune of Rs. 73,85, 267/- plus interest to the respondent bank. In this regard, the explanation submitted by the petitioner was rejected as non-satisfactory and it was decided to initiate a departmental proceeding against the



petitioner.

5. Learned Sr. Counsel for the petitioner submits that during the departmental proceeding, the management representative filed his written deposition before the Enquiry Officer on 13.05.2019 (Annexure-5) and the defense representative submitted his written report on 28.05.2019 (Annexure-6). The Enquiry Officer submitted his written report on 13.06.2019 but even prior to the submission of enquiry report by the Enquiry Officer, the disciplinary authority issued a second show cause notice on 29.05.2019 vide his letter no. HO/DAD/12/19-20/No 135 dated 29.05.2019 (Annexure-7). The petitioner submitted his reply to the second show cause notice on 26.06.2019 and filed some additional documents on 14.07.2019. The petitioner has also filed a petition in support of the reply to the second show cause notice on 30.07.2019 (Annexure-8 series), but ignoring all those, the disciplinary authority has awarded the punishment of “Dismissal” which shall ordinarily be disqualification for future employment, as contained in letter No.186 dated 01.08.2019 and the administrative order contained in letter no. 187 dated 01.08.2019 (Annexures- 9 series).

6. Learned Sr. Counsel for the petitioner further



submits that the petitioner has preferred a memo of appeal before the Chairman-cum-Appellate Authority, Uttar Bihar Gramin Bank, Muzaffarpur on 06.09.2019 (Annexure-10) but the appellate authority without appreciating the ground of appeal has in a mechanical manner upheld the punishment awarded to the petitioner by the disciplinary authority dated 01.08.2019 (as contained in letter no. 322 dated 23.10.2019 (Annexure-11)). Counsel for the petitioner specifically raised the following points, for consideration of this Hon'ble Court, that as per the memo of charge the loans were sanctioned in 2006-07 and 2007-08, he was issued letter of appreciation as well as granted promotion from Scale-1 to Scale-II in the year 2010, but for the work, for which he was appreciated and granted promotion, he has been subjected to the departmental proceeding and punishment at the fag end of his career, particularly, after his retirement. Counsel further submits the said departmental proceeding was initiated in the years 2018 and 2019 for the loans which were distributed in the year 2006-08, i.e. after the lapse of almost 11 years from the date of sanctioning of the loan. He further submits that the belated initiation of departmental enquiry is in gross violation of Clause 7(xii) of the Staff Accountability Policy. According to this no



accountability will be fixed for any lapse, which has not been pointed out in two successive audit reports or four years from the date of event whichever is later. Learned counsel further submits that delayed initiation of the departmental proceeding vitiates the memo of charge in view of the ratio laid down by the Hon'ble Supreme Court in the case of **P. V. Mahadevan Vs. M. D. T. N. Housing Board** reported in **2005(6) SCC 636**.

7. Learned Sr. Counsel further submits that the allegation about LIC policies are not based on any material as those were not sent for verification to the issuing branch of LIC instead thereof a tabular chart was sent for verification with wrong names about which there are allegations that those policies are fake on which there is no finding/verification made by the Enquiry Officer. Learned counsel further submits that the statement of the Presenting Officer has been recorded by the Enquiry Officer is beyond record and the petitioner had not provided any opportunity to cross-examine him on such statement. In this regard, the petitioner relies on a judgement rendered in the case of **Roop Singh Negi Vs. The Punjab National Bank and Ors.** reported in **2009(2) SCC 570**.

8. Learned Sr. Counsel for the petitioner further submits that the disciplinary authority failed to appreciate that



most of the loans were secured by equitable mortgage of the immovable property and some of the loan accounts were closed, while the KCC and CCGEN loans accounts did not require any security up to Rs.1,00,000/- even then the petitioner got submitted LIC policies as security, which demonstrate that he was prudent enough to protect the interest of the Bank. Learned counsel further submits that the major portion of the loan sanctioned by the petitioner was secured by equitable mortgage of the immovable property then the action ought to have been taken by the bank officials immediately, when the loan account became NPA in the year 2015-16, but the respondent - bank without initiating any proceeding against the defaulting borrower under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act';) against the defaulting borrower, instead thereof, the bank has chosen to file a certificate case for recovery of loan and the persons who were responsible in the banking system with a view to save their skin for taking correct action for recovery under the SARFAESI Act has made the petitioner a scapegoat and recommended for initiation of departmental proceeding against the petitioner to save their own skin, at the fag end of his



career.

9. Learned Sr. Counsel for the petitioner further submits that let us assume if any wrong has been done by the petitioner then in that case it can be said that it is merely a negligence simplicitor and not misconduct. In his support, he relied on a judgment rendered in the case of **the Union of India and Ors. Vs. J. Ahmed** reported in **1979 (2) SCC 286**.

10. Learned Sr. Counsel for the petitioner conclusively submits that from any corner the case of the petitioner does not come within the purview of the departmental proceeding particularly when for the same work he was appreciated and granted promotion and after a lapse of about 11 years particularly in the light of Staff Accountability Policy, he is not responsible for initiation of departmental proceeding which resulted into his dismissal from service at worst it may be said to be a negligence.

11. On the other hand learned counsel for the Bank submits that the petitioner was working as a Branch Manager at the relevant time. For the act of his omission and commission charge memo was issued on 20.12.2018. The departmental proceeding was decided to be initiated on 25.01.2019 and it was conducted on 13.05.2019. The Enquiry Authority submitted the



enquiry report on 13.06.2019 before the disciplinary authority showing the charges proved. The Disciplinary Authority awarded punishment as “Dismissal” to the petitioner under regulation 39 (1)(b) (v) of the Service Regulation 2010 of the Bank. Thereafter, the petitioner preferred appeal before the appellate authority and the appellate authority passed the final order on 23.10.2019 by which the punishment awarded to the petitioner by the disciplinary authority was upheld. He further submits that it has come in the enquiry that the petitioner being the Branch Manager has failed to assign LIC bonds taken from the borrower. He further submits that in the departmental proceeding, there are no procedural lapses. The disciplinary authority and the appellate authority have passed the order considering all the facts. He further submits that the petitioner being a bank officer cannot escape from his responsibility as he has to work with absolute integrity and honesty. Counsel for the bank relied on a judgment rendered in the case of **Binod Singh Sumitra Vs. The Chairman & Managing Director, Allahabad Bank** reported in **2018(3) PLJR 543** in which a manager was dismissed from service on the ground of sanctioning large number of cash and credit loans without pre-credit appraisal and by accepting forged/fabricated IT returns.



12. He further relied on another judgment rendered by the Hon'ble Supreme Court in the case of **B.C Chaturvedi vs. the Union of India** reported in **1995 (6) SCC 749** in which it has been held that where finding of a disciplinary authority appellate authority are based on some evidence, Court/ Tribunal cannot reappreciate the evidence and substitute its own findings.

13. Upon hearing the parties and perusal of the documents it transpires to this Court that the petitioner has sanctioned certain loans during the period of 2006-08 has not been denied by the bank. From the charge made it transpires to this Court that the charge memo was issued on 20.12.2018, and the petitioner retired on 31.12.2018 that is to say after a gap of about 11 years this proceeding has been initiated against him whereas Clause 7 (xii) of the Staff Accountability Policy states as under :

“ No accountability will be fixed for any lapse, which has not been pointed out in the two successive audit reports on 4 years from the date of the event (i.e. occurrence of lapse) whichever is later. In case any major irregularity attributable to the previous inspection period is detected subsequent to the second audit/inspection, the auditors/ inspectors concerned will be held accountable and be liable for



action/disciplinary proceedings. This time limit will not apply to the cases of (i) frauds (ii) other criminal offences or (iii) cases where malafide are inferable.

In this policy, a rider has been created that this time limit will not apply to the cases of (i) frauds (ii) other criminal offences or (iii) cases where malafide are inferable.

14. It is made clear to this Court after going through the said policy of the Uttar Bihar Gramin Bank that this policy comes into force with effect from 12.03.2014 and the charge has been framed in the year 2018-19. Meaning thereby at the time of framing of the charge, the said Staff Accountability Policy came into existence and was applicable to the employees and staff of Gramin Bank. The case of the petitioner in the opinion of this Court at worst comes within the purview of negligence and definitely neither a fraud nor a criminal offence nor under mala fide action. Hence, on this ground Clause 7 (xii) of the Staff Accountability Policy of the Uttar Bihar Gramin Bank itself protects the present petitioner.

15. In addition to that it also transpires to this Court that it has been specifically pleaded by the petitioner in his pleadings consistently in his statement of defense, second show cause as well as memo of appeal and the present petition that the loans were sanctioned after obtaining immovable properties of



the borrower under equitable mortgage and petitioner has also obtained LIC bonds from the borrower as an additional safety major. Therefore, in this view of the matter, the bank official must have to taken action against the borrower, immediately after the declaration of their accounts into NPA category, but the officials were sat over the matter and subsequently with a view to save their own skin made the petitioner a scapegoat, who was going to superannuate. This Court upon considering this aspect that for the purpose of deciding the present case there is a gross violation of the ratio laid down in the case of **Roop Singh Negi (supra)**, the relevant paragraphs 14 and 15 whereof is quoted as under:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.



15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

On this ground, it transpires to this Court that the finding of the Enquiry Officer is perverse.

16. The judgment on which the respondent relied rendered in the case of **Binod Kumar Sumitra (supra)** is related to accepting fraud and fabricated IT returns. Here in the present case, it is not the situation rather, non-consideration of the explanation filed by the petitioner before the Enquiry report is prevalent to this Court. Similarly in the judgment rendered in the case of **B. C. Chaturvedi (supra)** which shall only apply where a finding of disciplinary authority /appellate authority is based on certain evidence but here in the present case, the



findings of the disciplinary /appellate authority are not based on evidence. The consistent pleading of the petitioner in his defense and present pleadings has also not been specifically answered by the respondent bank.

17. In the light of the discussions made above and the reasons assigned this Court hereby sets aside the charge contained in Letter No.383 dated 20.12.2018; enquiry report dated 13.06.2019 contained in letter no. 135 dated 29.05.2019; order contained in letter No. 186 dated 01.08.2019; order contained in letter no. 187 dated 01.08.2019 and order dated 23.10.2019 contained in letter no. 322 dated 23.10.2019. The respondent Bank is directed to make payment to the petitioner relating to his retiral dues within three months from the date of production of a copy of this order.

18. Accordingly, the writ petition is allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01/04/2024
Transmission Date	NA

