(2010) 07 PAT CK 0184

In the Patna High Court

Case No : CWJC No. 8997 of 1996

Diwakar Kumar APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2013) 1 PLJR 781

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Laxmi Narayan Das, for the Appellant; Prashant Vedasen for the Bank, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the counsel for the Punjab National Bank (hereinafter referred to as the "Bank"). Petitioner is aggrieved by the order dated 6.8.1996, Annexure-9, whereunder the departmental proceeding initiated against him pursuant to charge-sheet dated 27.6.1996 has been directed to proceed and Conducting, Presenting Officer has been appointed. The challenge is on the ground that the charge-sheet dated 27.6.1996 is the reiteration of the charges contained in charge-sheet dated 24.7.1993, Annexure-2, perusal whereof would indicate that petitioner is alleged to have acquired assets without information/disclosure to the Bank and thereby committed breach of Clauses 20(1), 20(3), and 20(4) read with Clause 24 of the Punjab National Bank Officer Employees'' Conduct Regulation, 1977. After receipt of the aforesaid charge-sheet petitioner submitted before the Conducting Officer that there was a raid conducted at his residence by the Central Bureau of Investigation to verify the allegations contained in petition on the basis of which First Information Report bearing RC. 40(A)/93-Pt dated 31.12.1993 was registered. During the raid documents appertaining to the assets alleged to have been acquired by the petitioner without information to the Bank was seized by the authorities of the C.B.I. Documents being in custody of the C.B.I., petitioner was not in a position to contest the departmental proceeding. After such stand was taken by the petitioner the Conducting Officer adjourned the proceeding until further notice vide orders dated 27.6.1994, Annexure-4. After completion of the investigation the C.B.I. submitted charge-sheet no. 7/96 dated 29.3.1996, Annexure-6. After submission of the charge-sheet the authorities of the Bank revisited the matter and with reference to the earlier charge-sheet dated 24.7.1993, Annexure-2 served charge-sheet dated 27.6.1996, Annexure-7 alleging that the petitioner did not inform the Bank about the acquisition of the assets violating the provisions contained in Clauses 20(1), 20(3) and 20(4) read with Clause 24 of the Punjab National Bank Officer Employees'' Conduct Regulation, 1977. Having received the charge-sheet dated 27.6.1996, Annexure-7 petitioner once again submitted before the Bank that until disposal of the criminal case pursuant to the charge-sheet submitted by the C.B.I. the departmental proceeding may be kept in abeyance but such prayer of the petitioner was refused under the impugned order dated 6.8.1996, Annexure-9 and Sri S.N. Kakkar, Senior Manager, Zonal Office, Punjab National Bank, Patna was appointed as Enquiry Officer and Sri P.K. Pandey, Inspector, C.B.I.; Patna was appointed as presenting Officer. Petitioner has Impugned the order dated 6.8.1996, Annexure-9 by filing this writ petition on two grounds that until the disposal of the criminal case the present departmental proceeding should be stayed and that Sri P.K. Pandey, Inspector, C.B.I., Patna could not have been appointed as Presenting Officer in me departmental proceeding initiated against him.

2. During hearing of this writ petition learned counsel for the petitioner submitted that illegality concerning the appointment of Sri P.K. Pandey, Inspector, C.B.I. as the Presenting Officer in the departmental proceeding shall be raised before the Enquiry Officer and this Court, at this stage, need not decide the validity of appointment of Sri Pandey, Inspector, C.B.I. as Presenting Officer in the proceeding initiated against the petitioner, teamed counsel for the petitioner, however, submitted that until the criminal case pursuant to charge-sheet dated 29.3.1996, Annexure-6 is not disposed of petitioner shall be prejudiced if he is asked to disclose his defence in the departmental proceeding as the defence of the petitioner in the departmental proceeding and the criminal case is one and the same. In order to ensure justice to the petitioner until disposal of the criminal case, this Court should stay the further proceeding in the departmental proceeding.

3. Counsel for the Bank has opposed the prayer. He states that the scope of the disciplinary proceeding and the criminal case are different. According to learned counsel for the Bank in the disciplinary proceeding the charge is about the failure of the petitioner to inform the Bank about acquisition of the assets. In the criminal case, the charge against the petitioner is that he has acquired assets beyond the known sources of income. The scope of the two proceedings, according to learned counsel are quite different and disclosure of the defence of the petitioner in the departmental proceeding will have no effect over his defence

in the criminal case. In this connection learned counsel for the Bank further submitted that the Hon''ble Supreme Court in catena of decision(s) has clarified that disclosure of defence in departmental proceeding hardly cause prejudice in the criminal case and the theory of prejudice does no longer survive. In the circumstances, petitioner can very well participate in the departmental proceeding during the pendency of the criminal case without there being any prejudice to his defence in the criminal case. Reliance in this connection has been placed on the judgment of the Hon''ble Supreme Court in the case of State of Rajasthan Vs. B.K. Meena and others, , Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Having heard the counsel for the petitioner and the Bank and having perused the charge-sheet submitted by the C.B.I. dated 29.3.1996, Annexure-6 and the charge-sheet dated 27.6.1996, Annexure-7 as also the initial charge-sheet dated 24.7.1993 referred to in the charge-sheet dated 27.6.1996, Annexure-7; I am of the view that the charges levelled by the C.B.I. is that petitioner acquired assets beyond the known sources of his income but the charge as set out in the charge-sheet dated 24.7.1993 and 27.6.1996, Annexures-2 and 7 is that petitioner failed to disclose the acquisition of the movable/immovable property infracting Clauses 20(1), 20(3) and 20(4) read with Clause 24 of the Punjab National Bank Officer Employees'' Conduct Regulation, 1977. In the circumstances, the scope of the two charge-sheet being different the authorities of the Bank are well within their jurisdiction to proceed with the departmental proceeding. This writ petition is, accordingly, disposed of directing the authorities of the Bank to proceed with the proceeding pursuant to charge-sheet dated 27.6.1996 and 24.7.1993, Annexures-7 and 2 in accordance with law. As the matter has remained pending since long it is desirable that the proceeding be conducted expeditiously. Petitioner should be allowed to take photocopy of the documents which were seized by the C.B.I. from the court of the Special Judge where the criminal case is pending. The Special Judge should ensure that photocopy of all the documents as per the seizure-list is given to the petitioner at the cost of the petitioner. Before parting with this order, I may observe that at the time of filing of the writ petition petitioner was also placed under suspension but during the pendency of the writ case his suspension has been revoked. In the circumstances, no order is made in regard to the prayer to quash the suspension order which has since become infructuous.