
(2020) 03 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24521 Of 2019

Gunjan Kumar

APPELLANT

Vs

Management Of Circle Head Punjab National Bank And Ors

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A)
Constitution Of India, 1950 — Article 226

Citation : (2020) 03 PAT CK 0063

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Vijay Kumar, Suresh Pd. Singh, Kumari Rashmi

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioner and learned counsel for the Respondent-Bank.

After participating in a selection process, the petitioner was recruited to the Clerical Cadre of the Respondent-Bank. He reported for duty on 11.03.2013, when he was informed that a complaint had been made by one Chandan Kumar, cousin of the petitioner, alleging irregularity in his recruitment. The petitioner, therefore, was called upon to file affidavit before joining was accepted. The petitioner was allowed to join the service of the Bank on 13.03.2013. He underwent training and reported for duty on 25.3.2013 at Darbhanga.

On 21.5.2013, the petitioner was directed to appear before a Committee constituted by the Bank of New Delhi to submit his explanation in response to complaint raised by Chandan Kumar. On 18.02.2014, the charge memo was served upon the petitioner alleging that on 11.12.2011, another person had appeared in place of the petitioner in the written examination. . The impersonator had put his signature and thumb impression which differed from the petitioner's signature and thumb impression available with the Bank records.

For gaining appointment by adopting such unfair means for selection in the Bank, the petitioner was proceeded against with the aforesaid allegation in terms of Clause 5(m) and 5(o) of Bipartite Settlement dated 10.04.2002.

The petitioner submitted his response. He was subjected to a domestic enquiry, for which, Enquiry Officer and Presenting Officer were appointed. The Enquiry Report was submitted on 02.06.2014. The copies of the same was sent to the petitioner for his comments. Comments were submitted by the petitioner on 16.07.2014. The Disciplinary Authority proposed the punishment of dismissal without notice on 09.09.2014. The petitioner thereafter appeared before the Disciplinary Authority for personal hearing. Upon hearing the petitioner, the Disciplinary Authority passed final order on 22.05.2015 confirming the punishment of "dismissal without notice".

The petitioner preferred an appeal against the punishment of dismissal. After affording personal hearing to the petitioner, the Appellate Authority, on 22.08.2015, confirmed the punishment imposed by the Disciplinary Authority and rejected the petitioner's appeal. The petitioner, thereafter, raised an industrial dispute.

Reference case no. 09 (C) of 2016 thus came to be instituted. The matter referred for adjudication to the Industrial Tribunal at Patna was "whether the action of the management of Punjab National Bank, Darbhanga in terminating the service of the workman Sri Gunjan Kumar is justified on the basis of denying Natural Justice? If not, what relief he is entitled to?"

Award dated 25.06.2019 passed by the Presiding officer , Industrial Tribunal, Patna in Reference Case No. 09(C)of 2016 is assailed in the instant proceedings . The Tribunal upheld the order of the dismissal as being justified and in accordance with law. The Tribunal found that the petitioner was not entitled to any relief.

The learned counsel representing the petitioner submits that it is a case of insufficient evidence. Three handwriting experts were examined to ascertain whether the thumb impression and signature taken at the time of the written examination was tallying with that of the petitioner. As against this, the petitioner had adduced two experts, who had clearly

opined that the petitioner's specimen signature and finger print was tallying with the signature and finger print given at the time of written examination.

Management witness nos. 1 and 2 have clearly deposed that the standard signature and thumb impression of the petitioner did not tally with the disputed thumb impression and signature which was given at the time of written examination.

The defence witness no.1 produced by the petitioner, in his examination has also deposed that there were tremors in the disputed signature. In view of specific material available on record in support of the charge of impersonation , the

conclusion of the Industrial Tribunal does not require any interference on the grounds of insufficiency of evidence.

The petitioner has thereafter examined a Doctor to support his case that soon before the written examination he had suffered with meningitis and that such tremors found in the disputed signature was only natural. No such plea regarding the petitioner being affected with meningitis prior to the written examination has been raised by the petitioner before the Bank authorities in the domestic enquiry. In the domestic enquiry before the Bank Authority the petitioner has taken a plea that the signature and thumb impression were taken before the invigilator at the examination hall after verifying the photographs pasted on the admit cards. Accordingly, the petitioner has contended that the allegation regarding the thumb impression and signature being different was false and unsustainable.

For the first time, before the Industrial Tribunal he has placed on record a prescription showing that he was under treatment for the disease (meningitis) in between October 2011 till 1st week of December, 2011.

The Industrial Tribunal has disbelieved the petitioner's plea regarding suffering with Meningitis which plea was taken to overcome the tremors in his signature opined by his own defence witness. The Tribunal has taken note of the fact that no such documents were brought before the Enquiry Officer. For the first time the documents were produced before the

Appellate Authority. Such opinion of the Doctor was not placed in the Enquiry even though the evidence was consistent that signature of the petitioner at the time of examination did not tally with the specimen signature available on record. Dr. Siya Ram Mishra, who has deposed as being the doctor treating the petitioner for the disease of Meningitis has stated that a patient suffering from Meningitis takes at least about three months for fully recovering from the same. The period of treatment has been stated to be between October 2011 till 1st week of December, 2011.

The case of the workmen, on the other hand, is that he applied for the post of Clerk on 26.09.2011 and appeared at the Written Test on 11.12.2011 in between these two months he claims to have suffered a mild paralytic attack in the month of October 2011 and he underwent medical treatment for his recovery. Such stand of the petitioner is taken note of in the order of the Industrial Tribunal. The period in between submission of his application and examination is the precise period, during which the petitioner claims to be suffering from a mild paralytic attack. It is for the same period that Dr. Siya Ram Mishra has deposed that he was treating the workman for meningitis. There is also consistent evidence of experts examined on behalf of the Management that the questioned signatures are forged ones and not written by the person who has written the standards/authentic signature. The petitioner's plea of suffering with mild paralytic attack and doctors evidence that he was suffering with meningitis has, thus, been disbelieved by the industrial Tribunal. Conclusion of the Industrial Tribunal,

viewed in the background of the aforesaid facts on record, cannot in any manner be said to be a perverse finding or a finding suffering with any patent illegality.

In view of the aforesaid factual position and material available on records in support of the conclusion of the Industrial Tribunal, no case is made out for this Court to exercise jurisdiction under Article 226 of the Constitution of India for judicial review of the order of the Industrial Tribunal passed in Reference Case no. 9© of 2016.

The only procedural infirmity alleged by learned counsel is that on 25.04.2016 when the case was fixed for order on the point of fairness and propriety of domestic enquiry, the Industrial Tribunal had recorded that observation of the Enquiry officer was only based on report of experts. There is no independent application of mind, and as such, the enquiry was not done properly and fairly. Such finding was recorded while deciding the preliminary issue under Section 11(A) of the Industrial Disputes Act, 1947 (or short 'the Act'). It is submission of the petitioner's counsel that having arrived at such a conclusion the Industrial Tribunal should not have allowed the Management an opportunity suo motu to produce the documents and witnesses in the Tribunal to prove the case of management and the charge sheet against the delinquent for final adjudication of the case. The management as per the order dated 25.4.2016 of the Tribunal had not sought any such opportunity. Referring to the decision of the Apex Court in the case of Kurukshetra University vs. prithvi Singh reported in 2018(2) PLJR 177 (SC) it is submitted that such opportunity suo motu could not have been granted. The learned counsel representing the petitioner submits that in view of such conclusion the Tribunal should have straightway proceeded for considering whether the punishment of dismissal could be sustained or whether any lesser or no punishment was required to be imposed on the petitioner.

The legal position cannot be disputed in view of the judgment of the Apex Court in the case Kurukshetra University (Supra) but the same has to be applicable to the facts of this case, before the petitioner can claim benefit of the said judgment.

The fact admitted on record is that the order dated 25.4.2016 was not only containing a finding on the preliminary issue that enquiry was not done properly and fairly, but was also allowing an opportunity to the Management to produce the documents and witnesses before the Tribunal to prove its case and the charge sheet against the delinquent, for final adjudication of the case. The order was a composite order . If at all the petitioner was aggrieved by such opportunity being granted to the Management to prove its case, it is at that stage that he was required to assail the order dated 25.4.2016, insofar as it allowed such opportunity to the Management. The same has admittedly not been done. By order dated 25.04.2016 the proceedings were not closed

The petitioner thereafter, in fact, has participated in the dispute before the Tribunal adduced his witnesses, cross-examined witnesses of the Management,

all without any objection. For the first time such objection is now being raised by the petitioner by way of instant writ proceedings instituted more than six months after the final order of the Industrial Tribunal dated 25th June, 2019, by filing the instant writ petition on 06.12.2019. In between passing of the composite order dated 25.4.2016, till 25.06.2019, that is the date on which the Industrial Tribunal has passed the award, no objection has been raised by the petitioner to the opportunity granted by the Tribunal to the Management under order dated 25.4.2016. On the contrary, he has throughout participated in the proceedings without any objection in this regard. The petitioner, therefore, cannot be permitted to raise such an objection now when the award has been passed against the petitioner.

Clearly, the conduct of the petitioner disentitles him to raise such objection in view of the settled principles of acquiescence, waiver, promissory and equitable estoppel. The writ petition is, therefore, devoid of merit for the reasons, indicated hereinabove, and the same is dismissed.