

(2024) 04 PAT CK 0095

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3982 Of 2018

Jai Prakash Singh

APPELLANT

Vs

Chairman, Uttar Bihar Gramin Bank

RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:

Citation : (2024) 04 PAT CK 0095

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Ram Binod Singh, Prabhakar Jha

Final Decision : Dismissed

Judgement

1. Heard learned Senior Counsel for the petitioner and learned counsel for the respondent-Bank.

2. The present writ petition has been filed with following reliefs:-

(i) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the finding of the inquiring authority/enquiry report dated 20-04-2017, as communicated to the petitioner vide letter no. HO/DAD/10/17-18 No.22 dated 20-04-2017 (Annexure-5A & 5B), whereby erroneously the inquiring authority has come to the abrupt conclusion that the charge no. 01, 02, 03, 04, 05, 06, 07 & 08 have been found to be proved against the petitioner.

(ii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the order contained in letter no. HO/DAD//10/17-18/ No.163 dated 17-07-2017 (Annexure-7A) 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 Regulation, 2010" read with Uttar Bihar Gramin Bank Service (Amendment) Regulation, 2013 (hereinafter referred to as "Regulations" only).

Further, in terms of Regulation-48 of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010" read with Uttar Bihar Gramin Bank Service (Amendment) Regulation, 2013, Sri Jaiprakash Singh shall not be paid salary/pay and allowances for the period he remained under suspension that what it already paid to him as subsistence allowance.

(iii) 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//10/17-18/ No.163 dated 17- 07-2017 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 Regulation, 2010" read with Uttar Bihar Gramin Bank Service (Amendment) Regulation, 2013 (hereinafter referred to as "Regulations" only).

Further, in terms of Regulation-48 of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010" read with Uttar Bihar Gramin Bank Service (Amendment) Regulation, 2013, Sri Jaiprakash Singh shall not be paid salary/pay and allowances for the period he remained under suspension that what it already paid to him as subsistence allowance.

(iv) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 31-10-2017 contained in letter No. HO/DAD/10/17-18/ No.320 (Annexure-9) passed by the 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 authority of the Bank.

(v) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondents to re instate the petitioner with all consequential benefits.

(vi) 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 Senior Counsel for the petitioner submits that petitioner was appointed as Office Assistant in the Uttar Bihar Gramin Bank in the year 1979. He was promoted to the post of Officer Scale-I on 20.02.1989 and further promoted on the Officer Scale-II on 01.10.2014. It has been submitted by the counsel for the petitioner that when he was posted as Officer Scale-II at Regional Office, Gopalganj, he was put under suspension by the Head Office vide letter No.194 dated 16.07.2016 for allegedly committing fraudulent act while working as Branch Manager, Khorampur Branch. It has been mentioned that the petitioner has served as Branch Manager Khorampur Branch from 2011 to 2014. Thereafter, by virtue of his work in the said Branch, he was granted promotion considering his service record. But after two years from his relieving from Khorampur Branch he was put under suspension. Counsel submits that he was

served with a memorandum of charge contained in letter No. 250 dated 22.08.2016 by the Disciplinary Authority-cum-General Manager. In the said memo, in total eight charges were alleged. Following the charge memo, the departmental proceeding was commenced on 04.10.2016 which was finally concluded on 17.03.2017 in total 17 sittings which the management produced 68 exhibits (M. Ex.) and one management witness (M.W.). From the petitioner's side, total 11 exhibits (D.Ex.) and one witness were produced during the departmental proceeding. Counsel submits that in the said departmental proceeding all charges were found proved as the Enquiry Officer did not appreciate the documentary evidences properly. The finding of enquiry authority was communicated the petitioner along with his enquiry report. In this regard petitioner submitted his explanation on 12.05.2017 before the Disciplinary Authority-cum-General Manager, Uttar Bihar Gramin Bank (HO), Muzaffarpur, explaining all relevant facts and circumstances but without appreciating the explanation final order has been passed imposing award as penalty of dismissal from service vide letter No. 163 dated 17.07.2017 in terms of Regulation 39(1)(b) (v) and 48 of the Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010 read with Uttar Bihar Gramin Bank Service (Amendment) Regulation, 2013. The petitioner was remained under suspension what is already paid to him as subsistence allowances and the administrative order is contained in letter No.164 dated 17.07.2017 passed by the disciplinary authority. Being aggrieved and dissatisfied with the order passed by the disciplinary authority dated 17.07.2017 the petitioner has preferred memorandum of appeal before the Appellate Authority-cum-Chairman, Uttar Bihar Gramin Bank, Muzaffarpur, but the appellate authority without appreciating the grounds of appeal has upheld the punishment order to the petitioner by the Disciplinary Authority in a complete mechanical manner and without application of mind.

4. Learned Senior Counsel for the petitioner further submits that it is most surprising that departmental proceeding has been initiated for his work done in the year 2011-2014 and for the same period of work he was granted promotion as Officer Scale-II on 01.10.2014 considering his service records; whereas charge sheet was issued on 22.08.2016 as for the same work he was appreciated and granted promotion but after lapse of 2 to 5 years he was dismissed from the service in gross violation of Staff Accountability Policy of the Bank as Clause 7(12) of the Uttar Bihar Gramin Bank Accountability Policy 2014 states that no accountability will be fixed for any lapse which has not been pointed out in two successive audit report or four years from the date of event whichever is later. In support of his argument counsel relied on the judgment of Hon'ble Supreme Court in the case of P.V. Mahadevan Vs. M.D.T.N. Housing Board reported in (2005) 6 SCC 636. Counsel submits that the petitioner was posted as Branch Manager, Khorampur, from 2011 to 2014 and prior to initiation of the departmental proceeding at least two internal audits have been done by the Bank in the aforesaid Branch but no Audit Officer of the Bank raised or pointed out any irregularity by the petitioner. Counsel submits that the petitioner is basically

victim of sending a confidential complaint against his superior, which he has exhibited as his defence Exhibit-D.Ex.-11. Counsel further submits that in the enquiry proceeding there is gross violation of natural justice has been done by the enquiry officer as petitioner was not granted sufficient time to cross-examine the management witness nor he was provided the relevant document nor granted opportunity to cross-check the document produced by the management with original. In support of his argument, counsel relied on the judgment of State of U.P. Vs. Shatrughan Lal and Another reported in (1998) 6 SCC 651 as well as in the case of O.K. Bhardwaj Vs. Union of India reported in (2001) 9 SCC 180.

5. It has been further argued by learned counsel for the petitioner that the Enquiry Officer as well as Disciplinary Authority has completely failed to appreciate that in Uttar Bihar Gramin Bank the work in the Branch were being performed manually till the end of 2011 and only thereafter the computerized system was adopted. Counsel further submits that it was no experience for the petitioner to work on the computer as he was not sufficiently trained to operate the computer. It is with this reason some amount was transfer to each other which were collected later on. Counsel specifically mentioned that there is no manipulation or personal gain of the amount by the petitioner. Counsel further submits that in the enquiry report it has not come that petitioner has personally gain any money nor any complaint has come on behalf of the customer against the petitioner, but even then petitioner was punished with harsh punishment of dismissal from service.

6. Learned counsel for the petitioner take shelter of another judgment in the case of Roop Singh Negi Vs. The Punjab National Bank and Others reported in (2009) 2 SCC 570, in which it has been held that oral evidence is necessarily to be taken in the departmental proceeding. Counsel for the petitioner submits that it is true that all the charges are proved against the petitioner, but on the basis of the said charges presumed to be proved, the only conclusion can be drawn that the alleged irregularity has been done by the petitioner only due to negligence simplicitor and not due to misconduct and in this view of the matter the punishment of removal from the service is quite harsh, unreasonable and disproportionate to the wrong done by him. Learned Senior counsel submits and concludes his argument with this point that negligence is not a misconduct. In this regard, learned Senior counsel relied in the case of Union of India and Others Vs. J.Ahmed reported in (1979) 2 SCC 286.

He further relied on the judgment of Inspector, Prem Chand Vs. Delhi reported in (2007) 4 SCC 566 as well as on the judgment of H.L. Gulati Vs. Union of India reported in (2015) 12 SCC 408. Learned Senior Counsel concludes his argument with his last submission that during the pendency of the writ petition the petitioner attains the age of superannuation on 31.10.2019. He has served the Bank with full dedication for complete 38 years and submits that this Court should take a sympathetic view on the petitioner.

7. Learned counsel for the Bank, on the other hand, submits that at the relevant

time the petitioner was posted as Branch Manager of Scale-II, Uttar Bihar Gramin Bank, Khorampur Branch, under region Gopalganj. For the lapse and misconduct conducted by him a charge sheet was issued on 22.08.2016 followed by corrigendum on 29.02.2016. Counsel submits that the said charge sheet has been issued by the disciplinary authority. The enquiry has been conducted by Inquiring Officer and in presence of presenting officer eight charges mentioned in the charge memo. He submits that departmental enquiry commenced on 04.10.2016 and concluded the same on 20.04.2017 granting every opportunity following the principles of natural justice to defend the petitioner during the enquiry proceeding. In the enquiry proceeding, the enquiry officer submitted his finding on 20.04.2017 and held that all eight charges as proved against the petitioner. Enquiry Officer has considered all facts and records in his report. Opportunity to make his submission before him was also made to the petitioner but he has not submitted his reply within stipulated time. Reminder was also submitted then only the petitioner alleged that enquiry proceeding was conducted one sided in violation of the principles of natural justice as enquiry authority did not provide opportunity to produce witness as well as to produce document. He submits that the procedure adopted in the departmental proceeding was proper following the principles of natural justice and after granting full opportunity to the petitioner as well as presenting officer both. Counsel submits that the petitioner did not produce his witnesses after granting opportunity on 06.03.2017 and 17.03.2017 and finally the disciplinary authority has passed final order after granting show-cause. Counsel submits that the disciplinary authority has passed order in the light of Regulation 39(1)(b)(v) of Uttar Bihar Gramin Bank (Officers and Employees Service Regulation, 2010 read with Uttar Bihar Gramin Bank (Amendment) Regulation, 2013 on 17.07.2017 imposing punishment of dismissal from service as well as shall not paid salary/ pay and allowance for the period he remained under suspension what is already paid to him as subsistence allowance in the light of regulation 48 of Uttar Bihar Gramin Bank (Officers and Employees Service Regulation, 2010 read with Uttar Bihar Gramin Bank (Amendment) Regulation, 2013. Learned counsel submits that the petitioner has preferred appeal before the appellate authority and the appellate authority has passed order affirming the order passed by the disciplinary authority. He submits that the entire order has been passed completely following the principles of law laid down, therefore, there is no need of any interference. In support of his argument learned counsel for the Bank placed judgment of Punjab National Bank Vs. M.L. Kalra (D) THR. LRS. & Another reported in 2003 LiveLaw (SC) 733 and submits that in the disciplinary proceeding power of judicial review for the Courts in disciplinary action is circumscribed. The Court can only correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and the power exercised is not akin to adjudication of the case on merits as an appellate authority.

8. Upon hearing both the parties and perusal of the record, it is very much clear

to this Court that in the departmental proceeding that is to say High Court has power to judicial review being a constitutional Court and the scope of this Court is to merely evaluation of the decision making process and not the merits of the decision itself. It is to be ensured that fairness in the treatment and not to ensure the fairness of conclusion has been made. Upon perusal of the documents it transpires to this Court that proper opportunity for defence has been granted to the petitioner. So far as the benefit as prayed by the petitioner in the light of Staff Accountability Policy which protects the staff, according to which, no accountability will be fixed for any lapse which has not been pointed out in two successive audit report or four years from the date of event whichever is later. Here in the present case, four years from the date of event has not crossed. As such, the said accountability Policy 2014 shall not help in any manner to the petitioner. This Court shall also not interfere in the findings of the disciplinary proceeding due to the reason that both parties have granted opportunity to adduce evidence oral and documentary both. The ratio of P.V. Mahadevan Vs. M.D.T.N. Housing Board (supra) shall not help to the petitioner due to the reason that the departmental proceeding has been initiated well within time in the light of Uttar Bihar Gramin Bank Accountability Policy, 2014. Counsel himself admits in his case that the entire departmental proceeding has been conducted in 17 sittings in which 68 management exhibits, one management witness and 11 exhibits of petitioner were produced. Therefore, it cannot be said that this departmental proceeding is without considering evidences as it is the result of the scrutiny of the work done internally. Therefore, the evidences of external witnesses are not required essentially in view of this Court and, hence, the case of State of U.P. Vs. Shatrughan Lal and Another (supra) and in the case of O.K. Bhardwaj Vs. Union of India (supra) and case of Roop Singh Negi and The Punjab National Bank and Others (Supra) do not help the petitioner in any manner.

9. So far as the judgment on which the respondent Bank relied i.e., Punjab National Bank Vs. M.L. Kalra (supra) whose para-9 is relevant which is as follows:-

"9. Before proceeding any further, we may benefit by advertng to the ratio in Deputy General Manager (Appellate Authority) & Ors. v. Ajai Kumar Srivastava {(2021) 2 SCC 612} where a three-Judges Bench of this Court held that power of judicial review for the Courts in disciplinary action is circumscribed. The Court can only correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and the power exercised is not akin to adjudication of the case on merits as an appellate authority. The following was pertinently observed by the Bench:

"24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion..."

10. In that view of the matter, this Court is of the firm opinion that there is no

need of any interference in the orders either in the enquiry report or orders passed by the Disciplinary Authority as well as of appellate authority. Accordingly, this writ petition is dismissed.