
(2018) 08 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No 8063 of 2014

Nawal Kishore Ram

APPELLANT

Vs

State Bank of India & Ors.

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

State Bank of India Officers Service Rule, 1992 — Rule 67

Citation : (2018) 08 PAT CK 0032

Hon'ble Judges : MADHURESH PRASAD, J

Bench : Single Bench

Advocate : Rajendra Narayan, Shashi Bhushan Kr, S D Sanjay, Mohit Agarwal

Final Decision : Dismissed

Judgement

1. Heard learned Senior Counsel for the petitioner and the learned Senior Counsel for the Bank.

2 Petitioner has challenged the order dated 04.02.2013 issued by the General Manager â?"cum- Appointing Authority awarding the punishment of

dismissal in terms of Rule 67 (i) of the State Bank of India Officers Service Rule. The punishment contemplates that the period of suspension will not

be treated as on duty. Petitioner has also challenged the Appellate Authorityâ??s order dated 28.02.2014 whereby the order of punishment has been

upheld.

3 Learned Senior Counsel for the petitioner has very vehemently argued that the petitioner was not served with copy of the charge memo. He has

also submitted that two notices dated 07.10.2012 (Annexure 4) and 02.11.2012 (Annexure 6) were not served on the petitioner. He has submitted that

as a result of non-submission of charge memo as also said two notices, a serious infraction of the principles of natural justice has been perpetrated in

conduct of the proceedings against the petitioner. He has also submitted that enquiry report was not served on the petitioner and that the various issues, which the petitioner has raised before the Appellate Authority, have not been considered by the Appellate Authority. In support of his submissions, the learned Senior Counsel for the petitioner has relied upon his communication dated 05.09.2012 wherein he has requested the Enquiry Officer for copy of the charge memo by post. Referring to the Bank's communication dated 07.10.2012 and 02.11.2012, learned Senior Counsel for the petitioner has submitted that they were served upon him after the next dates which were fixed and communicated under the said letters. He submits that as a result of non-communication of notices and non-communication of charge memo, he has been deprived of his opportunity and such proceedings conducted in gross violation of the principles of natural justice are unsustainable in the eyes of law and cannot be made the basis of awarding such a severe penalty upon the petitioner.

4 Learned Senior Counsel for the respondent-Bank has drawn the attention of this Court towards the notice dated 19.08.2012 published by the respondent-Bank in the newspaper. He submits that the Bank made all possible efforts to communicate the dates fixed in the enquiry so as to enable the petitioner to participate and avail the opportunity of hearing. Referring to Annexure 3 of the writ petition, it is rightly pointed out by the learned Senior Counsel for the Bank that the same shows that the petitioner had received the notice dated 06.09.2012 whereby the next date in the proceedings, i e, 10.09.2012 had been communicated to the petitioner. Matter has been adjourned before the Enquiry Officer on various dates so as to facilitate petitioner's appearance. He submits that charge memo was not only sent to the petitioner but also pasted at his permanent residential address. Finally, referring to the appeal filed by the petitioner, which is Annexure 8 of the writ petition, he submits that the service of charge memo on the petitioner has been admitted by the petitioner in his appeal as it is his specific assertion in the appeal that charge memo was delivered to the petitioner on 27.09.2012.

5 Submission of learned Senior Counsel for the Bank is born from the averments of the petitioner's appeal. On going through the same, this Court

is of the opinion that the petitioner's plea, in the instant proceedings, regarding non-service of charge memo lacks bona fide. Admittedly, the petitioner had received the charge memo, if not earlier than at least on 27.09.2012. Referring to the proceedings before the Enquiry Officer, that is Annexure C to the counter affidavit, learned Senior Counsel for the Bank has rightly pointed out that other than sending letters by post to the Enquiry Officer, the petitioner, in spite of admitted service of charge memo, has never appeared before the Enquiry Officer and has chosen not to participate in the proceedings before the Enquiry Officer on any single date. His plea of non-service of enquiry report also appears to be without any basis.

6 The petitioner's response to the second show cause has been recorded in the order of the Appointing Authority/Disciplinary Authority dated 15.01.2013, duly acknowledged by the petitioner who has put his signature on the said proceedings. From perusal of the same, it is apparent that plea regarding non-supply of copy of enquiry report has not even been raised by the petitioner before the Disciplinary Authority. Before the Disciplinary Authority, the only plea raised by the petitioner is that he did not have intimation regarding the date and time of hearing and that he has, thus, been deprived of his opportunity to defend himself for the allegations levelled against him. The petitioner's plea regarding copy of enquiry report, not being submitted, also appears to be unsustainable as per the records.

7 Even, in his appeal filed before the Appellate Authority, petitioner has not raised the plea regarding non-supply of copy of enquiry report. The fact that petitioner was sending letters by post to the Enquiry Officer on the various dates making request, as is evident from the letters dated 05.09.2012, 18.10.2012 and 17.11.2012, is proof of the fact that petitioner was in full knowledge of the proceedings being conducted against him. Having full knowledge of the same and even though admittedly copy of the charge memo has been served on the petitioner on 27.09.2012, he has chosen not to participate in the proceedings and never appeared before the Enquiry Officer. Under such circumstances, relying upon the material available on record, the Enquiry Officer has submitted the Enquiry Report on 16.11.2012.

8 In the circumstances, this Court would find that the petitioner has in fact chosen not to participate in the proceedings in spite of specific knowledge of the dates fixed in the matter. Having done so, the petitioner cannot be

permitted to contend that infraction of the principles of natural justice has been occasioned. The petitioner has himself abstained from the departmental enquiry, though from the material available on the records, it is evident that he knew about it.

9 In this connection, this Court would refer to the judgment in the case of Board of Directors, Himachal Pradesh Transport Corporation and Another

â?"Versus- K C Rahi reported in

10 Under such circumstances, plea of natural justice would be deemed to have been waived and the petitioner would be estopped from raising it.

11 The writ petition filed by the petitioner is, thus, devoid of merit and the same is dismissed.