
(2023) 04 PAT CK 0057

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19650 Of 2016

Nawal Kishore Sharma

APPELLANT

Vs

Madhya Bihar Gramin Bank

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Citation : (2023) 04 PAT CK 0057

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Prashant Sinha, Vipin Kumar Singh, Suresh Pd. Singh

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the Bank and it's authorities.

2. Petitioner, in the present case, is seeking the following reliefs:

(a) For issuance of a Writ in the nature of Certiorari to quash the order of major penalty of "Compulsory Retirement" passed by the Disciplinary Authority (Respondent No. 3 & 5) on 16-Dec-2015 as per Letter Having ref no: MBGB/HO/DAC/V-424/5117/15. Annexure-VI.

(b) For issuance of a Writ in the nature of Mandamus to direct the Respondent No. (2) & (3) to reinstate the petitioner as Officer Scale-II and to restore the position of the petitioner as on the date of the petitioner from the date of suspension.

(c) For issuance of a Writ in the nature of Mandamus to direct the Respondent No. (2) & (3) to give all the benefits to the petitioner from the date of suspension along with payment of full back wages with interest @ 18% covering deductions already affected.

(d) To grant any other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Brief Facts of the case

3. The petitioner joined his service in the Madhya Bihar Gramin Bank as an officer in the year 1983. During the period 01.07.2013 to 31.12.2014, he was promoted to Scale-II officer and was posted as Branch Manager at the Branch Office, Aungari in the district of Nalanda.

4. It is alleged that during his posting as Branch Manager at Aungari Branch, on 14th December 2013 he issued two Fixed Deposit Receipts (FDR) each of Rs. 50,000/- in the name of one Narain Prasad and his wife Sundari Devi for twelve months. When the fixed deposit holders visited the Branch office on 02.01.2015 and sought encashment of the maturity amount of the two FDRs, the payments were not made and that led to the present proceeding against the petitioner.

5. Learned counsel for the petitioner has placed before this Court the article of charges contained in Annexure 'VII' to the amended writ application. The charges levelled against the petitioner are being reproduced hereunder for a ready reference:

6. Learned counsel for the petitioner has submitted that on receipt of the article of charges when the petitioner requested the disciplinary authority vide his letter dated 24.04.2015 to make him available the copy of the complaint said to have been submitted by the said Sri Narain Prasad and his wife Sundari Devi, the copy of the complaint was not made available to him. It is one of the submissions that the article of charges were served upon him without providing a copy of the complaint which form the basis of the charges.

7. Learned counsel submits that the disciplinary authority while instituting the disciplinary proceeding made one Sri Kaushal Kumar Dwivedi, Manager, H.O. Patna as Inquiry Officer. Sri Chandra Bhushan Kumar Sharma, B.M., B.O, Jaitipur (Nalanda) was appointed as Presenting Officer.

8. It is submitted that the Inquiry Officer was in the same Scale-II category, in terms of Regulation 41 of the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as the "Service Regulation") the Inquiry Officer should have been an officer placed in the higher scale. Learned counsel submits that the entire inquiry will be vitiated because of non-observance of the Regulation 41 of the Service Regulation.

9. It is further contended that in course of inquiry, the written complaint of Sri Narain Prasad and his wife were not brought on the record. Instead, the signed complaint which was collected in course of preliminary inquiry was brought as management exhibit No. 9. It is pointed out that as regards the signed complaint of the said Sri Narain Prasad submitted during the preliminary inquiry when question was put to the author of the preliminary inquiry report as to who had written the statement of Sri Narain Prasad in course of preliminary inquiry, the author of the preliminary inquiry report said that it was the son of the complainant Sri Narain Prasad who had written the statement in his own pen but

when Sri Narain Prasad who deposed as management witness, made a statement that it was the author of the preliminary inquiry report who had recorded the statement in his pen.

10. Learned counsel for the petitioner submits that the credibility of the statement of Sri Narain Prasad will be on stake because of the varying statements made by the author of the preliminary inquiry report and Sri Narain Prasad as regards making of the statement. It is submitted that in any case, the fact remains that the original complaint which forms basis of the article of charge was never proved in course of inquiry.

11. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of State of U.P. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772. Emphasis has been given on paragraph 34 to 39 of the said judgment to submit that a government employee facing a departmental inquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself. It is submitted that the same principle will apply in respect of the employee of the Bank as well. On the aforementioned grounds the impugned order as contained in Annexure XII page 90 of the amended writ petition has been assailed. No other point has been raised before this Court.

Submission on behalf of the Bank

12. On the other hand, Mr. Suresh Prasad Singh, learned counsel for the Bank has opposed the writ application. Learned counsel submits that on a bare perusal of the memo of charge, it would appear that there were serious allegations against the petitioner of financial indiscipline. It is submitted that so far as charge no. 2 is concerned, it has been proved in course of disciplinary proceeding and taking a lenient view of the matter only, considering the service span of the petitioner, the disciplinary authority has awarded a punishment of "compulsory retirement".

13. Learned counsel has further drawn the attention of this Court towards the depositions of the complainant (MW1) as contained in Annexure 'R/E' to the reply to the amended petition filed on behalf of the Bank.

14. It is submitted that when a question was put to MW1 as to whether he had made a statement before the Inquiry Officer, he said 'Yes' he had given the statement. The delinquent employee never put any question to MW1 challenging the contents of his statements. It is submitted that whether the statements were recorded by the inquiry officer (author of the preliminary inquiry report) or by the son of the complainant Sri Narain Prasad would not make any difference as to the sanctity of that document. There is no dispute that Sri Narain Prasad had put his signature thereon and in course of the disciplinary proceeding he admitted to have made the statement.

15. Learned counsel further submits that a perusal of the statement of Awadhesh

Kumar @ Munna (DW1) would also demonstrate that on 02.01.2015 during night hours the petitioner had given him a phone call, he visited the house of Sri Narain Prasad on 03.01.2015 where certain papers were created by ante-dating. It is DW1 who is witness of this petitioner who has stated that the application was got signed by Sri Narain Prasad and the date thereon was shown as 16.12.2013. Learned counsel, therefore submits that being a Bank employee if the petitioner indulges in creating documents by ante-dating to defend his misdeeds, the Bank as an employer would definitely lose its trust and confidence in him. In such circumstance, if the Bank has awarded a punishment of compulsory retirement to the petitioner, no fault may be found with the same.

16. Learned counsel further submitted that no doubt the Inquiry Officer was not in the higher scale but he was senior to the petitioner and in such circumstance the petitioner would be required to demonstrate that by non-observance of Rule 41 of the Service Regulations a serious prejudice and injustice has been caused to the petitioner. Relying upon a judgment of the Hon'ble Supreme Court in the case of Pankajesh Vs. Tulsi Gramin Bank & Anr. reported in 1997 (6) SCC 138, learned counsel submits that in the said case a similar kind of plea was taken saying that the Inquiry Officer was not an officer higher in rank which was the requirement of Regulation 30(3) of the Staff Service Regulation. The Hon'ble Supreme Court held that the Inquiry Officer is a delegatee of the disciplinary authority and mere delegating the inquiry whether the inquiry officer is of the same cadre or of higher grade, it did not cause any material irregularity nor resulted in any injustice to the petitioner. It is submitted that similar view may be taken in the present case.

17. Learned counsel submits that in the aforementioned circumstances non-availability of the original complaint would not make any difference as the complainant himself came in course of inquiry and his veracity has been tested by the petitioner.

Consideration

18. Having heard learned counsel for the petitioner and learned counsel for the Bank as also on perusal of the records, this Court finds substance in the submission of learned counsel for the Bank. The fact that the Inquiry Officer was in the same scale would not lead this Court to take a view that inquiry has vitiated. The reason for taking this view is that in course of argument learned counsel for the petitioner has not argued that any prejudice or injustice has been caused to the petitioner because of entrustment of the inquiry to an officer from the same scale. The records would rather show that the inquiry officer acted impartially inasmuch as the first charge which is of a very serious nature has been held as 'not proved'. The petitioner has voluntarily participated in the inquiry and only at the appellate stage he raised this plea.

19. On perusal of the records particularly the statement of the complainant Sri Narain Prasad (MW1) and the statement of the defence witness Munna (DW1),

this Court finds that the Inquiry Officer as well as the disciplinary authority have acted reasonably and no perversity may be found either with the findings of the inquiry officer or with the view taken by the disciplinary authority.

20. The ratio of the judgment cited on behalf of the petitioner would not be attracted in the facts of the present case inasmuch as in this case the complainant himself appeared in course of disciplinary proceeding and withstood the test of cross-examination.

21. In result, this Court finds no merit in this Writ Application. It is dismissed, accordingly.