
(2013) 01 PAT CK 0091
In the Patna High Court
Case No : CWJC No. 23383 of 2012

Rana Pratap Singh

APPELLANT

Vs

Uttar Bihar Gramin Bank and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 PLJR 721

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Mukundjee, for the Appellant; Prabhakar Jha, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Pd. Verma, J.—The petitioner has approached this Court under Article 226 of the Constitution of India assailing the legality and correctness of the order dated 4.1.2012 (Annexure-7) passed by the disciplinary authority of the respondent-Uttar Bihar Gramin Bank inflicting upon him the punishment of dismissal from service of the respondent-Bank on the basis of the findings recorded in the departmental proceeding. He has also assailed the validity and correctness of the appellate order dated 26.7.2012 (Annexure-10), whereby the appeal filed on behalf of the petitioner has been rejected and the punishment of dismissal from service has been affirmed. It is the common case of the parties that while the petitioner was posted as Officer Scale-1 of Regional Office, Jhanjharpur in the district of Madhubani, he was subjected to departmental proceeding for several charges with respect to discharge of his duties as Branch Manager of Yadopatti Branch of Uttar Bihar Gramin Bank. The memorandum dated 1.6.2011 (Annexure-1) was issued to the petitioner informing him that a departmental enquiry is proposed to be held against him with respect to various charges as detailed in articles of charges. The petitioner was called upon to submit his statement of defence within a period of seven days. One Sri S.S. Singh, Branch Manager, Katihar Branch under Regional Office, Purnea of the

respondent-Uttar Bihar Gramin Bank was appointed as Enquiry Officer and Sri B.C. Mishra, Officer Scale-1, was appointed as a Presenting Officer. In the articles of charges altogether 10 charges were framed against the petitioner, which according to the respondent-Bank would constitute misconduct within the meaning of Regulation Nos. 18 and 20 of Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as Regulations, 2010).

2. In response to the aforesaid memorandum dated 1.6.2011, the petitioner filed his written statement of defence on 24.6.2011 (Annexure-2), which was found not satisfactory as a result thereof regular departmental enquiry was held. On conclusion of the departmental enquiry, the enquiry report dated 27.10.2011 was submitted and a copy of the aforesaid enquiry report was forwarded to the petitioner by the disciplinary authority by letter dated 5.11.2011 (Annexure-5).

3. As per the findings of the enquiry officer all the ten charges against the petitioner were found to have been proved. Though articles of charges have been fully detailed in Annexure-1 of the memorandum dated 1.6.2011, but it would suffice to notice only few charges for showing the gravity of charges. Charge No. 1 against the petitioner was that while he was on medical leave on 28.4.2009, 11.6.2009, 12.6.2009 and 13.6.2009, he disbursed huge amount of loan to the different persons. He adjusted old NPA loans from the amount disbursed causing financial loss to the Bank. Charge No. 3 against the petitioner was that he deposited abnormally huge amount of more than Rs. 25 lakhs in his personal O/D account during the period from 29.1.2007 to 13.6.2009 i.e. about 28 months and this amount was in addition to be the amount, which was otherwise payable to the petitioner. Charge No. 5 was that petitioner unauthorisedly sanctioned crops insurance claim of Rs. 25,990/- in his own name.

4. During the course of departmental enquiry nine management exhibits and two management witnesses were produced by the presenting officer to prove the charges against the petitioner. Though, the petitioner participated in the enquiry and was given full opportunity, yet he did not produce even a single witness in support of his version and for disproving the charges against him. However, he produced only one defence exhibit. After conclusion of the departmental enquiry, as stated above, the enquiry report was submitted on 27.10.2011 holding the petitioner guilty for all the charges and a copy of the enquiry report was forwarded to the petitioner on 5.11.2011. Learned counsel appearing on behalf of the petitioner has fairly admitted that petitioner was served a copy of the enquiry report.

5. Learned counsel appearing on behalf of the petitioner has assailed the impugned order passed by the respondent authorities, primarily on two grounds, firstly, the departmental enquiry was concluded hurriedly within a short span of time, and secondly, the audit report, which according to him is sheet anchor for passing the impugned order, was not supplied to the petitioner.

6. Learned counsel appearing on behalf of the respondent-Bank has supported the impugned order and has submitted that the petitioner has committed a gross misconduct, and, therefore, nothing less than dismissal from service could have been awarded against him in view of the findings of guilt recorded against the petitioner by the enquiry officer.

7. With respect to the submissions of the learned counsel for the petitioner that departmental enquiry was concluded hurriedly within a short span of time, this Court finds that the memorandum alongwith articles of charges was issued to the petitioner on 1.6.2011. The departmental enquiry commenced on 8.8.2011, and after having four sittings, it concluded on 20.10.2011. The Enquiry Officer submitted his report on 27.10.2011. Though, the learned counsel for the petitioner has submitted that the period taken for conclusion of the departmental enquiry was very short, but he has not pointed out any provisions either under the Regulations-2010 or under any other law which require that the departmental enquiry cannot be concluded within a period of about two and half months. This Court further finds that despite opportunity given to the petitioner, he has chosen not to examine even a single witness in support of his case. He produced only one defence exhibit. If that is the position, then there was no valid reason to extend the enquiry unnecessarily for any longer period. It is not the case of the petitioner that though he wanted to produce some more witnesses and some more documents, yet he was not given opportunity by the enquiry officer to do so.

8. It was next canvassed by the learned counsel for the petitioner that the last sitting of the enquiry was held on 20.10.2011. The petitioner filed his written argument on the same day i.e. on 20.10.2011, but the presenting officer submitted his written argument/written brief on 24.10.2011. Therefore, it was contended that once enquiry was over on 20.10.2011, then the written argument/brief submitted by the presenting officer on 24.10.2011 ought not to have been accepted. The proceedings of the departmental enquiry have been brought on record as Annexure-3 series. From the proceeding of the departmental enquiry dated 20.10.2011, this Court finds that on that date the petitioner was present in the departmental enquiry. The enquiry officer has noticed that the delinquent has submitted his written argument. However, the Presenting Officer made a request for giving one week's time for filing of his written argument. The prayer made on behalf of the Presenting Officer was accepted in presence of the petitioner and he was granted time till 27th October, 2011 for filing the written argument. The petitioner did not object at that time for granting an opportunity to the Presenting Officer for filing written argument on or before 27th October, 2011. Admittedly, written argument by the Presenting Officer was filed within the time specified on 24.10.2011 itself, and thereafter, enquiry report was submitted on 27.10.2011. Therefore, the submissions made on behalf of the petitioner that the proceeding was concluded hurriedly does not find support either, from the material facts available on the record or from any legal provision.

9. Coming to the second point that the copy of the audit report was not supplied to the petitioner, which is the sheet anchor, according to the petitioner, for passing the punishment order of dismissal from service, this Court finds that a list of documents was produced by the Presenting Officer on 2.9.2011, which includes the internal audit report dated 2.7.2009 running into 66 pages. The aforesaid internal audit report was produced during the course of enquiry on 19.10.2011 and was marked as management exhibit no. 2. From the proceedings dated 12.9.2011 as also 19.10.2011 of the departmental enquiry, this Court does not find that the delinquent-petitioner ever demanded the copy of the aforesaid internal audit report. From the perusal of the impugned original order dated 4.1.2012 as also the impugned appellate order dated 26.11.2012, this Court further finds that there is nothing to show that the aforesaid internal audit report was the basis for inflicting the punishment of dismissal from service against the petitioner. Therefore, this submission is misconceived and has to be rejected.

10. Obviously, the petitioner was holding the responsible post of Branch Manager of the respondent Bank. The charges proved against him are very very grave. He has been found to have disbursed a huge amount of about Rs. 41 lakhs as loan, while he was on medical leave. On the dates of medical leave, the petitioner could not have disbursed the loan amount causing huge financial loss to the Bank. He has been found to have deposited abnormally huge amount of Rs. 25 lakhs in his personal O/D account, which is other than the known source of his income. The petitioner has also been found to be guilty for the charge that he unauthorisedly received crops insurance claim of Rs. 25,990/- for himself while he was still a functionary of the Bank; These being the charges, besides other 7 charges, proved against the petitioner, he has been visited with a punishment of dismissal from service. Learned counsel for the petitioner has not pointed out any provisions of Regulations-2010, which has been violated by the respondent authority while awarding the punishment of dismissal from service against the petitioner.

11. It is well settled that while exercising the powers of judicial review under Article 226 of the Constitution of India, this Court is required to examine only the correctness or otherwise of the decision making process and not the decision itself. This Court does not find any procedural irregularity committed either by the enquiry officer for holding enquiry or by the respondent authorities for awarding the punishment of dismissal from service against the petitioner.

12. Lastly, it was submitted that the punishment awarded against the petitioner is disproportionate to the charges proved against him. In the background of gravity of charges proved against the petitioner, the punishment of dismissal from service cannot be said to be disproportionate or incommensurate. Nothing less than dismissal from service was warranted in the factual background of the present case, and misconduct proved against the petitioner in view of the provisions contained in Regulations-2010. For the reasons recorded above, this

application has to fail and it is accordingly dismissed, but there shall be no order to costs.