

(2018) 05 PAT CK 0118

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10392 Of 2003

Sanjay Kumar Srivastava

APPELLANT

Vs

Punjab National Bank And Ors

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Citation : (2018) 3 PLJR 846

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Arup Kr. Chongdar, Nazir Ansari, Sunil Kumar Singh, Sharad Kr. Sinha

Final Decision : Allowed

Judgement

1. The petitioner, by way of the present writ petition, has prayed for quashing the order dated 06.11.2000, whereby and whereunder the petitioner has

been inflicted with a major punishment of removal from service. The petitioner has also prayed for quashing of the appellate order dated 14.08.2003.

2. The brief facts of the case are that the petitioner was initially appointed as Clerk-cum-Cashier on 28.04.1994 and was temporarily posted at the

Branch office Budha Colony, Patna whereafter, he was permanently posted w.e.f. September, 1994 at the Branch office, Saksohra, Dist-Patna. On

07.10.1997, the petitioner was served with a charge sheet containing various allegations against the petitioner herein. The petitioner had filed his reply

denying all the charges. Thereafter, vide letter dated 17.02.1998, the disciplinary authority appointed an Inquiry Officer as well as a Presenting Officer

and a regular departmental proceeding was initiated against the petitioner herein. The inquiry was effectively held only on three dates. The Inquiry

Officer submitted an inquiry report dated 15.01.2000 which was forwarded to the

petitioner vide letter of the Bank dated 8/16.02.2000. The petitioner had then filed his response to the so called show cause notice pointing out the various infirmities. After receipt of the reply of the petitioner herein, the respondent-Bank had then served a second show cause notice dated 05.08.2000, proposing punishment of removal from the services of the Bank, to the petitioner herein, which was duly replied to by the petitioner herein, whereafter the disciplinary authority had passed the final order dated 06.11.2000 inflicting upon the petitioner, the punishment of removal from service. The said order of punishment dated 06.11.2000 was appealed against by the petitioner before the Zonal Manager and the appellate authority by an order dated 14.08.2003 dismissed the appeal of the petitioner herein.

3. The learned counsel for the petitioner, referring to the inquiry report, has submitted that a bare perusal of the inquiry report dated 15.01.2000 would show that none of the charges have been conclusively proved and the entire inquiry report is based on surmises and conjectures, hence is perverse and fit to be set aside. The learned counsel for the petitioner, referring to the discussion of charge no. I(A) made in the inquiry report, has submitted that the said discussion would show that only two sums of Rs. 500/- and Rs. 1000/- can at best be said to have been deposited in the account of the petitioner herein which, by no stretch of imagination, can be said to be misappropriation of huge amount. Infact, the Inquiry Officer at internal page no. 4 of the inquiry report has opined that the said charge cannot be said to have been proved consequently. As far as part 2 of charge no. I(A) is concerned, nothing has been brought on record during the course of the departmental inquiry to show that any amount was credited to the account of the petitioner herein. Now, coming to part 3 of charge no. I(A), the petitioner has duly explained the credit of certain small sums of money in his account, however the Inquiry Officer has not given any finding against the petitioner herein. The learned counsel for the petitioner has submitted that charge no. I(B) pertains to the petitioner permitting unauthorized persons to handle cash and perform other clerical duties on various dates in the Branch. In this regard, the Inquiry Officer has stated that the petitioner was not the authority who could have allowed such persons to work, hence this charge also fails as far as the petitioner is concerned.

4. Charge no. I(C) pertains to the petitioner marking his presence by tampering the attendance register. In this regard, the learned counsel for the petitioner has submitted that the attendance register was not produced during the course of the inquiry so as to substantiate the said charge, hence it cannot be said that the said charge has been conclusively proved as against the petitioner herein. Thus, the submission of the learned counsel for the petitioner is that the inquiry report is based on no evidence and moreover, no material has been brought during the course of inquiry so as to substantiate even a single charge out of the bunch of charges leveled against the petitioner herein.

5. The learned counsel for the petitioner has further submitted that the disciplinary inquiry is a quasi-judicial inquiry to be held in consonance with the principles of natural justice, hence the Inquiry Officer is required to apply his mind to the evidence, discuss the evidence and then give his finding which should be supported by reasons. In this connection, the learned counsel for the petitioner has relied upon a judgment reported in (2005) 3PLJR

142 (Sri Jai Prakash Narayan v. The State of Bihar and ors.). The learned counsel for the petitioner has also relied upon a judgment of the

Honâ??ble Apex Court reported in (2009) 2SCC 570 (Roop Singh Negi v. Punjab National Bank and ors.) to contend that mere production of

documents is not enough and contents of the documentary evidence has to be proved by examining witnesses, which has not been done in the present

case. The learned counsel has also referred to the letter of the Sr. Regional Manager, Regional office, Patna, the disciplinary authority who has

passed the impugned order of punishment dated 06.11.2000, written to the Chief Vigilance Officer (Vigilance Cell) to contend that the said disciplinary

authority has himself admitted that Inquiry Officer was biased to some extent. Thus, it is submitted that once the disciplinary authority himself has

accepted that the Inquiry Officer was biased, the said inquiry report cannot be relied upon for the purposes of inflicting punishment on the petitioner

herein. Lastly, it is submitted that the Senior Regional Manager, the disciplinary authority of the petitioner herein, vide his letter dated 18.09.2000 had

written to the Chief Vigilance Officer (Vigilance cell), observing therein that since there is no complaint against the petitioner regarding his behaviour

as a Bank employee, the punishment of removal from service is too harsh, hence it is proposed to award punishment of stopping of six future

increments, but nonetheless, despite the said observation of the disciplinary authority, the petitioner has been inflicted with the punishment of removal from service.

6. At this juncture, it would be pertinent to refer to the reply filed on 06.09.2004, on behalf of the respondents to the supplementary affidavit filed on behalf of the petitioner, paragraphs no. 9 and 10 whereof are reproduced hereinbelow :-

9. That in their advisory capacity, the vigilance cell of the bank headed by the Chief Vigilance Officer advised for the infliction of the punishment of discharge from service with superannuation benefits as would be due otherwise on that stage and without disqualification from future employment that is the punishment for which the disciplinary authority had himself proposed earlier by his letter dated 05.08.2000 contained in Annexure-7.

10. That on the receipt of the advice from the vigilance cell of the bank, the disciplinary authority made a fresh application of his own independent mind bereft of any extraneous influence to the entire records of the enquiry and on consideration thereof was of the opinion that the proposed punishment of discharge from service was the befitting punishment in the facts and circumstances of the case and accordingly by his order dated 06.01.2000 (Annexure-1) he awarded the impugned punishment of discharge from service.

7. In this context, the learned counsel for the petitioner has submitted that the disciplinary authority has not applied his independent mind and has passed the impugned order of punishment on the basis of the directive of the Chief Vigilance Officer which is contrary to the prevailing law and vitiates the order of punishment dated 06.11.2000.

8. Per contra, the learned counsel for the respondent-Bank has submitted that there is no procedural lapses in conduct of the disciplinary proceedings, hence no interference is required in the order of punishment dated 06.11.2000. It is further submitted that this Court would not sit in appeal over the report of the inquiry officer and the order of punishment passed by the disciplinary authority and re-appreciate the entire evidence, inasmuch as power of judicial review in disciplinary proceeding cases are limited.

7. I have heard the learned counsel for the parties and gone through the materials on record. It is apparent from the inquiry report dated 15.01.2000, as discussed at length hereinabove in the preceding paragraphs, that no material whatsoever conclusively points towards the guilt of the petitioner herein. Infact, the present case is a case of no evidence apart from the fact that most of the charges have been found to have not been conclusively proved. Moreover, even the disciplinary authority has opined that the Inquiry Officer appears to be biased to some extent, hence, in such view of the matter, the said inquiry report is perverse and cannot be relied upon. Another aspect of the matter is that the disciplinary authority itself has opined in its letter written to the Chief Vigilance Officer that the behaviour and conduct of the petitioner has otherwise been good and the punishment of removal would be too harsh, hence it would be proper to inflict punishment of stoppage of six future increments. The statement of the respondents in their reply dated 06.09.2004 clinches the issue in favour of the petitioner, inasmuch as apparently upon the direction of the Chief Vigilance Officer, punishment of removal from service has been inflicted upon the petitioner herein. Thus, apparently, the disciplinary authority has not applied its independent mind while passing the impugned order of punishment dated 06.11.2000 and there is an apparent aberration in law, vitiating the said order of punishment.

8. For the reasons mentioned hereinabove, it is apparent that the entire inquiry report is perverse, based on no evidence, and the order of punishment dated 06.11.2000, by which the petitioner has been inflicted with the punishment of removal from service, which is based on the perverse inquiry report, is also not tenable in the eyes of law. Apart from what has been stated hereinabove, the disciplinary authority while passing the said order of punishment dated 06.11.2000 has been influenced by other considerations, hence the order of punishment dated 06.11.2000 is fit to be set aside and accordingly, the order dated 06.11.2000 issued by the respondent-Senior Regional Manager and the disciplinary authority of the respondent-Bank is quashed. In view of the fact that the order of punishment dated 06.11.2000 has been quashed, the appellate order dated 14.08.2003 is bound to fall and is accordingly, set aside as well.

9. The writ petition is allowed.