

(2006) 08 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 8133 of 2000

Sri Surendra Prasad Sah

APPELLANT

Vs

The Vaishali Kshetriya Gramin Bank and Another

RESPONDENT

Date of Decision : 19-08-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 406, 409, 420, 466

Citation : (2006) 4 PLJR 1

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner and the counsel appearing for the Bank.

2. The petitioner who is an employee of the Vaishali Kshetriya Gramin Bank, Muzaffarpur which has now been merged into Uttar Bihar Kshetriya Gramin Bank has filed this writ petition assailing the order dated 6.7.1988, Annexure-2 whereunder after completion of the departmental proceeding he has been inflicted punishment of stoppage of two increments in the time scale. He has also assailed the appellate order dated 14.10.1988, annexure 3 whereunder his appeal has been dismissed and the punishment awarded by the disciplinary authority has been upheld. He is further aggrieved by the order dated 1st April, 2000, annexure 5 whereunder the appellate authority even refused to review the earlier order dated 14.10.1988 annexure 3 on the ground of acquittal of the petitioner in the substantive criminal trial taken for the offence under Sections 406, 409, 420, 467, 468, 409, 466/34 of the Penal Code at the instance of Hardao Sah who is said to have been duped by the petitioner by opening fictitious loan account.

3. Initially petitioner was charge sheeted for having fraudulently opened other term loan account bearing Nos. 1108 to 1123 and HSS. Account Nos. 2086 to 2097 and thereby depriving the bank and the loanee concerned of Rs. 32,000/- The chargesheet is dated 1.4.1987, and is contained in annexure 1. The enquiry

officer conducted the enquiry and submitted enquiry report which was duly considered by the disciplinary authority and under order dated 6.7.1988, annexure, 2 punishment of withholding two increments in the time scale was imposed on the petitioner, Perusal of the order dated 6.7.88 indicates that the charge in regard to the opening of the fictitious loan account i.e. O.T.C. No. 1108 to 1123 and depriving the bank and the loanee of Rs. 32,000/- was not proved. Charge Nos. 2 and 3 in regard to opening of the fictitious H.S.S. Account No. 2086 to 2097 however was proved. The appeal against the said order was considered by the Board of Directors of the bank in its 16th Meeting which was held on 7.10.1988 and the Board of Directors dismissed the appeal, whereafter dismissal of the appeal was communicated to the petitioner under order bearing letter No. 324 dated 14.10.1988, annexure 3. It does not appear from perusal of the said communication that while dismissing the appeal the Board of Directors of the bank recorded any reasons in support of its order. In the circumstances, this Court proceeds on the footing that the appellate order does not contain any reason in support of the dismissal of the appeal.

4. One of the loanee, namely, Hardeo Sah lodged criminal prosecution against the petitioner for opening of the fictitious loan account under Sections 406,409,420,467,468,409,466/34 of the Penal Code. The prosecution launched against the petitioner ended in acquittal as would appear from the judgment dated 28.2.1995, passed in GR No. 416/87/Tr No. 43/95 which is contained in annexure 4 to this application. After being acquitted in the aforesaid criminal trial the petitioner again approached the Board of Directors of the bank to review the punishment order which request was considered by the Board of Directors which again declined to interfere with the punishment order in favour of the petitioner on the ground of acquittal in the trial. The order of the Board of Directors was communicated to the petitioner under letter No. 407 dated 1.4.2000 which is contained in annexure 5 to this application. Perusal of the aforesaid communication dated 1.4.2000 annexure 5 also does not indicate that the Board of Directors recorded any reasons in support of their order not to interfere with the punishment order imposed on the ground of acquittal recorded by the trial court under judgment dated 28.2.2005, annexure 4. The petitioner thereafter has approached this Court by filing the writ petition.

5. Learned Counsel for the Bank with reference to the counter affidavit as also enquiry proceeding register has made a valiant attempt to support the three orders namely the original order passed by the disciplinary authority dated 6.7.1988 and two appellate orders dated 14.10.1988 annexure 3 and 1.4.2000 annexure 5 and has submitted that acquittal in the criminal trial does not ipso facto mean exoneration in the disciplinary proceeding. According to him, the disciplinary authority having considered the seriousness of the charge as also the findings recorded by the enquiry officer has imposed punishment under order dated 6.7.1988 and the appellate court having affirmed the same, as such, only on account of acquittal in the criminal trial the petitioner cannot be exonerated of the punishment imposed against him as the punishment itself was imposed much

earlier than acquittal recorded under judgment dated 28.2.1995.

6. Learned Counsel for the petitioner in reply, however, has submitted that the submissions of the learned Counsel for the bank is wholly misconceived as consideration of the acquittal order of the petitioner does not mean that he must necessarily be exonerated of the charges but there must be a consideration of the fact that independent criminal court has acquitted the petitioner of the charge that he was not responsible for opening any of the fictitious loan accounts and in the light of the findings recorded by the criminal court the disciplinary authority and the appellate authority should once again apply themselves to the validity of the finding earlier recorded and conclude a fresh whether the order imposing punishment dated 6.7.88 should be maintained as thereunder itself the petitioner has been absolved of charge No. 1. In this connection he further submitted that nine of the so called fictitious loanees appeared in the trial but could not bring home of the charges against the petitioner. He further contended that in any view of the matter the disciplinary authority is required to reconsider the matter once again as the enquiry report on the basis of which the original order was passed was never furnished to him. Since the matter is being remitted back to the appellate authority to reconsider the same in the light of the findings recorded in the criminal trial, this Court is not inclined to consider any of the points urged above including the one whether enquiry report was ever served on the petitioner or not. The petitioner is at liberty to impress upon the appellate authority even the fact that he was not served with the enquiry report and the original order, annexure 2 was passed even without giving him benefit to rebut the findings recorded therein. As the matter is being remitted back to the appellate authority the two orders of the appellate authority including communications dated 14.10.1988 and 1.4.2000 as contained in annexures 3 and 5 are quashed.

7. It goes without saying that having quashed the orders and communication of the Board of Directors as contained in Annexures 3 and 5 the Board of Directors of the Bank is directed to reconsider the appeal against the original order dated 6.7.1988 in the light of the acquittal recorded in the judgment dated 28.2.1995, annexure 4 and other grounds taken in the present writ case. The reconsideration be made at an early date, in any case, within a period of three months from the date of receipt/production of a copy of this copy. It goes without saying that the appellate authority shall pass speaking order.

The writ petition is disposed of.