

(2024) 05 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2541 Of 2018

Sujit Ranjan

APPELLANT

Vs

Chairman, Uttar Bihar Gramin Bank

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Citation : (2024) 05 PAT CK 0063

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Ram Binod Singh, Prabhakar Jha, Amitesh Jha

Judgement

1. Heard learned Senior counsel for the petitioner and learned counsel for the respondent-Bank.

2. The present writ petition has been filed for quashing the order contained in Letter No.32 dated 01.02.2017 followed by the administrative Order contained in Letter No.33 dated 01.02.2017 and also for quashing the appellate order contained in Letter No.809 dated 29.03.2017 passed by the General Manager-cum-Appellate Authority of the respondent-Bank. The further prayer has been made in the writ petition for quashing of the proposed order contained in Letter No.25 dated 11.01.2017 issued by the disciplinary authority for quashing the enquiry report dated 29.08.2016 of the Enquiry Officer and also quashing the charge sheet and the statement of imputation contained in letter No.700 dated 05.02.2016 by which the petitioner has been dismissed from service in terms of Regulation 39(2)(b)(vi) of Uttar Bihar Gramin Bank Officer and Employees Service Regulation 2010 read with Uttar Bihar Gramin Bank (Amendment) Regulation, 2013. It has also been prayed to make payment of the petitioner's salary, pay and allowances for the period he remained under suspension.

3. Learned Senior counsel for the petitioner submits that the petitioner was appointed as Office Assistant in Uttar Bihar Gramin Bank on compassionate ground. The petitioner is a simple matriculate. His first posting was at Raxaul

branch and, thereafter, he was sent to Dilawarpur branch. At the relevant time, the branch of the bank was a manual bank and had not been computerized. Counsel submits that he was placed under suspension vide letter No.697 dated 03.02.2016 on the ground of initiation of the departmental proceedings. Learned Senior counsel further submits that charge sheet was drawn vide letter No.700 dated 05.02.2016 in which two charges were levelled against the petitioner. Firstly that the petitioner has wrongfully and without any authority enhanced the credit limits in 93 KCC accounts due to which Bank's interest has been jeopardized and due to his irresponsible behaviour financial loss at the tune of Rs.18,33,387/- was caused to the Bank. The second charge was made that the petitioner made payments in excess of sanction limit in 8 KCC accounts due to which bank's interest has been jeopardized and on account of irresponsible behaviour financial loss at the tune of Rs.2,43,635/- was caused to the Bank. Learned counsel for the petitioner submits that the charge sheet and the imputation of the misconduct has been provided to the petitioner but neither list of witnesses nor any documentary evidence has been provided to him. Counsel for the petitioner submits that the charge has been issued on 05.02.2016 for the alleged wrong has been done of the year 2010. Learned Senior Counsel further submits that the petitioner has filed a show-cause explanation on 20.02.2016 by post, in which complete denial has been made that the loan limit of any of the account has been made by him individually; rather plea has been taken that every enhancement of the limit has been made upon instruction taken by his high Official. It has been mentioned by learned Senior Counsel that the petitioner was advised to take complete bed rest and as such, he could not attend the departmental proceeding regularly but he has submitted his medical certificates on each and every date. But the enquiry officer instead of waiting has proceeded ex parte against the petitioner and no notice of initiation of ex parte proceeding has been served upon the petitioner. Learned Senior counsel further submits that in the enquiry report, both the charges were proved against the petitioner. A copy of the enquiry report was forwarded to the petitioner also by the disciplinary authority. Learned counsel submits that in defence of the enquiry report he has submitted his show-cause before the disciplinary authority, but the point which has been raised by the petitioner has not been considered by the disciplinary authority though it has been acknowledged in the order but no reason has been assigned with a view to ignore the same. Learned Senior counsel further submits that the punishment of dismissal from the services has been made against which the petitioner has preferred his appeal before the General Manager-cum-Appellate Authority. But the General Manager-cum-Appellate Authority has also rejected his appeal. Thereafter, the petitioner has preferred the writ petition. In his defence, learned counsel for the petitioner has raised two documents before this Court. The first document he has raised is Annexure-6 in which he has made specific points that what are his defence by way of filing second show-cause. The another point on which he has put emphasis has been attached with his pleading by way of filing supplementary affidavit, i.e., Annexure-11, which is the Staff Accountability Policy of Uttar Bihar

Gramin Bank. Learned Senior counsel further submits that Clause 7 (xii) of the Staff Accountability Policy of Uttar Bihar Gramin Bank, is in his favour due to the reason that it categorically states that no accountability will be fixed for any lapse which has not been pointed out in the two successive audit reports of four years from the date of event. Learned Senior counsel submits that in the present case, admittedly, the alleged wrong has been committed in the year 2010 but the charge memo has been issued in the year 2016, i.e., after lapse of about six years.

4. Learned counsel further submits that it is true that after this event the FIR has been lodged against the petitioner but in the said FIR the branch Manager was also made accused but the result of the criminal case is the exoneration of the petitioner from the charges by way of final form. Learned Senior counsel submits that according to him there are three gross illegality which has been made by the disciplinary authority as well as not considered by the appellate authority:

I. The points taken in the show-cause has not been discussed.

II. That neither the original authority nor the appellate authority has considered in its Rule 7(xii) of the accountability policy of the Bank and,

III. That the criminal case in which petitioner has been exonerated.

In this background, learned Senior counsel submits that the orders passed by the disciplinary authority and appellate authority are bad in law and, therefore, be set aside. He may be permitted to join in the Bank.

5. Learned counsel for the respondent-Bank, on the other hand, vehemently opposes the prayer of the learned counsel for the petitioner and submits that the petitioner being the clerk of the Bank has dared to ignore the policy. He has no jurisdiction to enhance the credit limit of customers, but by ignoring the law he has enhanced the credit limit, which subsequently caused acute loss to the Bank and as soon as this fact came to the knowledge of the Bank, the Bank has initiated charge memo against him, filed criminal case against him along with the Branch Manager. Counsel submits that the petitioner was granted due opportunity following the natural justice. But the petitioner even after knowledge of the departmental proceeding opted not to defend. In result, the Bank has initiated ex parte departmental proceeding against him. Learned counsel for the Bank also submits that the pleading of the counsel for the petitioner may not be accepted that second show-cause has not been considered. He has emphasized on the order passed by the disciplinary authority that each and every points which have been mentioned in the show-cause has been taken due care and inserted in the order sheet also and thereafter a reasoned order has been passed. Learned counsel for the Bank further submits that counsel for the petitioner has not read the provision under Clause 7(xii) of the Accountability Policy, because there is exception in the said policy itself that in the case of fraud, other criminal offences and cases where malafide are inferable in that situation the benefit of Clause 7(xii) of the Accountability Policy shall not be

available to the delinquent. In this view of the matter, counsel for the Bank submits that the original order as well as appellate order have been passed with reason and both orders are sustainable in the eye of law.

6. Upon hearing the parties and going through the pleadings, it transpires to this Court that the petitioner has committed the alleged wrong during the period of 2010. It has also come to the knowledge of this Court that the wrong has been done during the period when the petitioner was handling the Bank, in absence of the Branch Manager, as the Branch Manager was on leave. This Court is of the firm view that if the higher authority has granted leave to the Branch Manager, then they ought to make arrangement and they must not permit to run a Branch through a clerk only. This mistake they have caused. This Court is also of the view that the alleged wrongs have been done in the year 2010, and the account in which credit limit has been enhanced in the year 2010 continued with profit up to 2015 and after 2015 the account become started converting into NPA, then the Bank became aware. The plea which has been taken in the show-cause on which there is no discussion in the original order and the appellate order that the operation of the Bank account were insured, then "whether the actual loss caused has been recovered by the Insurance Company or not?" The most important aspect of the matter, i.e., Clause 7(xii) of the Staff Accountability Policy of Uttar Bihar Gramin Bank, which states as follows:-

"07. (xii). No accountability will be fixed for any lapse, which has not been pointed out in the two successive audit reports of 4 years from the date of the event (i.e. occurrence of lapse) whichever is later. In case any major irregularity attributable to the previous inspection period is detected subsequent to the second audit/inspection, the auditors/inspectors concerned will be held accountable and be liable for action/disciplinary proceedings. This time limit will not apply to the cases of (i) frauds (ii) other criminal offences or (iii) cases where malafide are inferable. "

7. Upon going through the Banks Accountability Policy, it is very clear to this Court that four years are the period limit during which action has to be taken but action has not been taken. The exception of applicability of Clause 7(xii) of the Accountability Policy as raised by the Bank's counsel is correct that in case of fraud other criminal offences or cases of malafide, the exemption shall not be granted. Here in the present case, it is true that FIR has been lodged, but it is also true from the FIR that the petitioner has been exonerated and no malafide has not been alleged against the petitioner in the departmental proceeding. The question of personal profit has also not been alleged in the departmental proceeding. In this background, this Court hereby set aside order contained in letter No.32 dated 01.02.2017, administrative order contained in letter No.33 dated 01.02.2017 issued by the Regional Manager-cum-Disciplinary Authority and order contained in letter No.809 dated 29.03.2017 passed by the General Manager-cum-Appellate Authority with direction to the disciplinary authority to pass order afresh considering every points raised in the 2nd show-cause filed by

the petitioner as well as following its own Staff Accountability Policy-Clause 7(xii) within three months from the date of receipt/production of a copy of this order. Since election has been notified, therefore, 90 days shall be counted from the date of end of election. If the management found that petitioner is at not fault, in that case direction for immediate joining shall be made.