

(2012) 07 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case of 6629 of 1999

Sushant Kumar Mandal

APPELLANT

Vs

The State Bank of India

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 07 PAT CK 0041

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Man Mohan and Mr. Vikas Mohan, for the Appellant; K.K. Sinha, for the Respondent

Judgement

Honourable Mr. Justice, S.N. Hussain

1. Heard learned counsel for the petitioner and learned counsel for the respondents- State Bank of India and its authorities. This writ petition has been filed by the petitioner challenging letter of DGM/DPS/R/Gen/22 dated 21.5.1999 by which the Deputy General Manager (Disciplinary authority) State Bank of India (hereinafter referred to as "the Bank" for the sake of brevity) directed the enquiry to be reopened from the stage of presentation of Bank's documents in terms of Rule 68(3) (i) of State Bank of India officers Service Rules (hereinafter referred to as "the Rules" for the sake of brevity)

2. It is not in dispute that the petitioner joined the Bank in 1977 as Clerk-cum-Cashier, whereafter he was promoted to Junior Management Grade I on 31.12.1981 and was transferred to various places in Bihar. When he was posted at Moubhandar in the district of East Singhbhum an order dated 27.07.1996 was issued by the disciplinary authority and charge sheet along with statement of allegations was served upon the petitioner levelling four charges against the petitioner. It is not in dispute that the enquiry in the matter started on 31.1.1997 and it was closed on 27.08.1998 and the enquiry officer submitted his enquiry report on 26.09.1998 exonerating the petitioner from two charges and reporting

the remaining two charges to be partially proved against the petitioner.

3. The said enquiry report was sent to the petitioner along with letter dated 17.10.1998 directing the petitioner to make any representation on the findings of the enquiry officer and pursuant thereto the petitioner filed his representation on the findings of the enquiry officer on 10.11.1998 before the disciplinary authority.

4. The allegation of the petitioner is that thereafter the disciplinary authority did not inform the petitioner that he was intending to send the matter back to the enquiry officer and without any notice to the petitioner and without giving any opportunity to the petitioner to place his case, which might have dispelled its doubt, the disciplinary authority passed its order dated 21.05.1999 under the provisions of Rule 68(3) (i) of the Rules appointing another enquiry officer, as the earlier enquiry officer had retired, for making fresh enquiry into the matter as according to the disciplinary authority certain vital documents, including documents marked as enclosures to PEX. 15, which were essential to arrive at a fair conclusion at the said enquiry, had not been duly marked by the enquiry officer as exhibits during the earlier enquiry.

5. On the other hand, learned counsel for the respondents vehemently opposes the contentions of learned counsel for the petitioner and submits that Rule 68(3) (i) is with respect to the powers of the disciplinary authority to reopen the enquiry and no requirement is provided for issuing any notice or show cause to the petitioner in that regard. He further submits that the petitioner was fully aware of the enquiry report which was sent by the disciplinary authority to him, whereafter he had himself filed an application dated 10.11.1998 along with a representation on the findings of the enquiry officer. Hence, he submits that there is no occasion for the petitioner to challenge the said order of the disciplinary authority dated 21.05.1999 which was fully legal, proper and justified.

6. Rule 68 (3) (i) of the Rules provides that the disciplinary authority, if it not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority whether the Inquiring Authority is the same or different for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provisions of sub-rule (2) as far as may be.

7. No doubt, there is no mention about any notice or show cause to the proceedee before passing such an order, but it is quite apparent that the impugned order had been passed being dis-satisfied with the enquiry report and hence if the disciplinary authority was dis-satisfied in any manner whatsoever with the enquiry report it was incumbent upon it to give at least an opportunity to the proceedee to present his case and file his show cause in that regard and only when such authority was dissatisfied with the show cause of the proceedee such step could have been taken. This is the requirement of equity, principles of natural justice and fairness.

8. Furthermore, the plea taken by the disciplinary authority for remitting the

matter to enquiry officer afresh appears to be absolutely frivolous and misconceived as from the impugned order itself it is quite apparent that the documents which the disciplinary authority considered to be vital were already on record and hence the disciplinary authority could itself have considered those documents while passing its final order. In the said circumstances, the impugned order of the disciplinary authority dated 21.05.1999 (Annexure-1) is held to be illegal and bad and is accordingly quashed. However, the disciplinary authority may, if it finds necessity, consider the matter afresh and pass a legal and just order in accordance with law after giving proper notice/information to the petitioner.