IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S). No. 1432 of 2016

Devendra Prasad Yadav .... **Petitioner**

Versus

1. Jharkhand Gramin Bank through its Chairman, Ranchi.
2. The General Manager and Competent Authority, Jharkhand Gramin Bank, Ranchi.
3. The Regional Manager, Jharkhand Gramin Bank, Ranchi Region, Ranchi.
4. The Branch Manager, Jharkhand Gramin Bank, Ranchi Main Branch, Ranchi.
5. The Branch Manager, Jharkhand Gramin Bank, Raikera Branch, Gumla, Jharkhand.

.... **Respondents**.

CORAM: HON'BLE DR. JUSTICE S.N.PATHAK

For the Petitioner : Mr. L.C.N. Shahedeo, Advocate
Mr. Sahadeo Choudhary, Advocate
For the Respondents : Mr. A. Allam, Sr. Advocate

17/ 06.10.2023 Heard the parties.

Prayers made

2. By way of present writ petition, petitioner has thrown challenge to the order of punishment dated 01.12.2015, by which he has been dismissed from services and further for quashing the appellate order dated 15.02.2016, by which the appeal preferred by the petitioner against the order of punishment has been dismissed.

Petitioner has further prayed for direction upon the respondents to reinstate him to the post of Staff Officer, treating the period of dismissal as continuance in service.

Factual Matrix

3. As per the factual matrix, while the petitioner was posted as Credit Officer at Ranchi Main Branch of Jharkhand Gramin Bank, an FIR was lodged by one Sri Pradeep Kumar, the then Manager of Ranchi Branch of respondent-Bank stating therein that during his Inter Branch Reconciliation, it came to his notice that a fake transaction of Rs.7,46,500/- had been done

in Ranchi Branch of the respondent-Bank. On the basis of the said complaint, an FIR being Chutia P.S. Case No. 38/13 was registered against three accused persons namely, Rajiv Ranjan Singh, Arjun Thakur and Aman Anand. It is the case of the petitioner that in the said FIR, he was not made accused. Subsequently, another FIR No. 45/13 was also lodged by Sri Binod Bihari Das, the then Manager of Raikera Branch of respondent-Bank at Kamdara P.S. stating therein that during his inter branch reconciliation, it was found that on 31.05.2003, an amount of Rs.2,19,000/- was illegally credited into the S.B. A/c. No. 1711 of Shri Mahesh Kumar. In course of internal investigation, the said Mahesh Kumar stated in his written report dated 23.09.2013 that the then Manager Shri Devendra Prasad Yadav had credited the aforementioned amount in his bank account No. 1711. However, this amount was returned by Shri Mahesh Kumar to Shri Devendra Prasad Yadav on different dates.

4. For the aforesaid illegal acts, the petitioner was issued show-cause dated 28.06.2013 asking his reply within seven days of receipt of the said show-cause which regarding commission of alleged irregularities during his posting at Ranchi Branch. However, the petitioner, in want of certain documents which were not supplied by the respondent-Bank, could not submit his explanation within time.

5. Subsequently, the petitioner was arrested by Chutia Police on 13.09.2013 in connection with FIR No. 38/13 and hence, he was put under suspension by the Chairman of the respondent-Bank vide order dated 17.09.2013 w.e.f. 13.09.2013. The respondent No. 3 again issued another show-cause seeking reply of the petitioner but inadvertently, the petitioner could not submit his explanation. Thereafter, the respondent No. 3 decided to initiate departmental proceeding against the petitioner and accordingly, the petitioner was informed and served with charge-sheet vide letter dated 09.01.2015. Thereafter, the departmental proceeding started on 19.02.2015 and same was concluded on 13.07.2015. Though the petitioner participated in the said enquiry through his representative but some important documents demanded by the petitioner in his defence were neither provided

to him on the pretext that the same were missing from Branch record. Thereafter, the Enquiry Officer, after conducting the enquiry, submitted his report dated 16.09.2015 to the General Manager of the respondent-Bank holding the petitioner guilty of the charges. Thereafter, as per instructions of the General Manager-cum-Competent Authority of the respondent-Bank, the petitioner submitted his detailed reply/ representation dated 03.10.2015, on the findings recorded by the Enquiry Officer. However, the respondent No. 2 without giving 2nd show-cause and providing personal hearing, passed the order of dismissal from service, dated 01.12.2015, which shall ordinarily puts effect disqualify the petitioner from future employment also.

6. Against the said order of dismissal, the petitioner preferred an appeal which also stood dismissed on 15.02.2016, confirming the order of dismissal dated 01.12.2015. Hence, the petitioner has been constrained to knock the door of this Court.

Submissions of learned counsel for the petitioner

7. Mr. L.C.N. Shahedeo, learned counsel appearing for the petitioner strenuously urges that the action of the respondents is illegal, arbitrary and without jurisdiction. Learned counsel submits that most of the charges levelled on the petitioner are related to the alleged transactions made 10 years back and during the course of departmental proceeding when he asked the Presenting Officer to produce the documents related to those old transactions, the same was denied on the ground that the same was not available in the Branch. The non-supply of relevant documents has caused serious prejudice to the petitioner as if those documents had been brought on record, then the petitioner would have certainly in a better position to explain as to what has actually happened 10 years back. Learned counsel further argues that respondents should have taken a lenient view at the time of awarding punishment taking into account 27 long years of unblemished service career of the petitioner. Learned counsel further argues that without giving 2nd show-cause notice or any opportunity of hearing, the respondents have awarded the petitioner major punishment of dismissal from services, which is a clear cut violation of principle of natural justice. Learned counsel

further argues that even the Appellate Authority has not considered the prayer of the petitioner and mechanically affirmed the order passed by the Disciplinary Authority. Learned counsel further argues that it is a case of no evidence since the material witness has not been examined on the basis of which the FIR was lodged against the petitioner. Learned counsel accordingly submits that, for the aforesaid facts and reasons, the impugned orders are not tenable in the eyes of law and the same are fit to be quashed and set aside and direction be issued to reinstate the petitioner into services with all consequential benefits. Learned counsel further argues that there is no allegation that petitioner was in any way connected with the Account Holders and the omission or commission, if any, has been done bonafidely and there is no bad intention behind the same. Petitioner has been given harsh punishment for the wrong done without any intention and the same was bonafide mistake and no loss has been incurred to the Bank. The money wrongly credited was properly identified and the mistake was also rectified right after getting information. Therefore, the punishment awarded to the petitioner is fit to be quashed and direction may be given to reinstate the petitioner into service with consequential benefits.

Submissions of learned counsel for the Respondents

8. Per contra, counter-affidavit has been filed. Learned senior counsel for the respondents justifying the impugned orders submits that rightly the order of dismissal was issued which was later on affirmed by the Appellate Authority. Learned senior counsel further argues that keeping in view of the petitioner’s involvement in the matter leading to his arrest by the police on 13.09.2019, he has been placed under suspension w.e.f. 13.09.2013. The Bank had served memorandum calling explanation to the petitioner which was subsequently replied. However, being not satisfied with the reply of the petitioner and considering the grave offence alleged to have been committed by him and there was likelihood of Bank sustaining huge financial losses, it was decided to initiate departmental proceeding in which the petitioner was held guilty of the charges levelled against him and as such, the Disciplinary Authority issued order of dismissal. Learned senior

counsel denying the submissions of learned counsel for the petitioner submits that during the course of departmental proceeding proper opportunity was given to the petitioner to present his case and most of the documents were also provided except one or two which were not in possession of the respondents. Learned senior counsel further argues that time and again, it was asked from the petitioner and his representative that whether they want to produce any other defence witness or evidence but they answered in negative, so it is wrong to say that petitioner was not afforded opportunity to present his case. Learned senior counsel further argues that so far as issuance of 2nd show-cause notice is concerned, the enquiry report was made available to the petitioner, so there is no violation of principles of natural justice and the Appellate Authority was also of the view that petitioner was neither kept deprived of natural justice nor any decision affected by being prejudiced was caused to him. Keeping in view the gravity of misconduct, findings of the Enquiry Officer, records and other facts of the case the Appellate Authority, found no merit in the appeal preferred by the petitioner and the same was accordingly dismissed. Learned senior counsel, therefore, submits that there are no purported questions of law which are germane in the instant case to be decided by this Court and the writ petition being devoid of any merit is fit to be dismissed.

Findings of the Court

9. Be that as it may, having heard the rival submissions of the parties across the bar, it appears that punishment of dismissal is too harsh and disproportionate and as such, the same is fit to be quashed and set aside for the following facts and reasons:

(I) Admittedly, non-supply of relevant documents caused serious prejudiced to the petitioner. It has been admitted by respondents that some of the documents were not available with the respondents and as such, the same could not be supplied to the petitioner.

(II) When a particular document was relied upon by the delinquent, the same was to be served to him seeking his reply. In the case of

non-supply of the same, the enquiry report would be termed to be perverse.

(III) Petitioner had an unblemished service career of 27 long years but the same was not considered by the respondents while inflicting punishment upon him. The respondents ought to have considered his unblemished service career of 27 long years which does not warrant at least major punishment of dismissal.

(IV) The respondents have admitted that 2nd show-cause notice was not served along with enquiry report rather, it was argued that since enquiry report was served there was no requirement of issuance of 2nd show-cause notice.

This argument of learned senior counsel for the respondent-Bank is totally misconceived and not in consonance with law.

10. The Hon'ble Apex Court in case of **Managing Director, *ECIL & Ors. v. B. Karunakar & Ors.,*** reported in ***(1993) 4 SCC 727*** has held that**:**

> *"**26.** The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary*

authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

Further in case of ***Ram Kishan v. Union of India,*** reported in ***(1995) 6 SCC 157*,** the Hon'ble Apex Court has held as under **:**

*"**10.** …………. The purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect."*

The same view has been reiterated by the Hon'ble Apex Court in case of ***Punjab National Bank & Ors. v. Kunj Behari Misra,*** reported in ***(1998) 7 SCC 84,*** relevant paras of which is reproduced herein below:

"17. *These observations are clearly in tune with the observations in Bimal Kumar Pandit case[8] quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case[4] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had*

> *been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.*
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> ***19.*** *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”*

11. It is settled legal propositions that issuance of 2nd show-cause notice along with copy of enquiry report is sine qua non and inflicting the punishment that also of dismissal, without seeking reply by way of 2nd show-cause notice, is not tenable in the eyes of law.

12. Since the amount in question has already been returned by the petitioner, there is no loss to the respondent-Bank. It is not a case of the respondents that petitioner had defalcated any amount. The money wrongly

credited in other's account has already been returned and mistake was rectified after getting information.

13. The High Court of Delhi in the case of **Chaman Lal Vs. State Bank of India,** reported in **2003 (71) DRJ 133**, wherein, the Court taking into consideration the judgment rendered by the Hon'ble Apex Court in the case of **Ranjit Thakur Vs. Union of India (1987) 4 SCC** held that *"normally the Court would not substitute a punishment awarded by the disciplinary authority, but the Court while coming to the conclusion that no loss has been caused to the Bank, directed the disciplinary authority to modify the punishment order"*. Relevant para-7 is under:-

> *"In view of the law laid down in Ranjit Thakur v. Union of India [1988 (1) L.L.N. 42], normally this Court would not substitute a punishment awarded by the disciplinary authority. However, in this case from the perusal of the order of appellate authority while coming to a conclusion that no loss has been caused to the bank still appellate authority has not stated that why dismissal be not substituted. 30 years of services rendered by the petitioner from 1955 to 1985 when show-cause notice was issued has been washed away. Said order shows complete nonapplication of mind whereby denying the terminal benefits to the petitioner. This writ petition is pending in this Court since last 14 years. Petitioner, I have been told is quite old. No useful purpose will be served if case is remanded back to disciplinary authority. Even otherwise during the course of hearing on the last date of hearing, I had directed the respondent to take instructions as to whether the respondent was prepared to take a fresh decision in view of what has been stated above. Sri Arora has informed that he has received instructions that the decision cannot be reviewed and in this regard has placed a letter, dated 21 August, 2003, on record. Therefore, no useful purpose will be served to remit the case again to the respondent. The penalty of dismissal is disproportionate to the charges proved against the petitioner. The order, dated 17 September, 1986, passed by disciplinary authority order, dated 8 September, 1987, passed by appellate authority and order, dated 4 February, 1989, passed by reviewing authority are hereby quashed. The order of dismissal is hereby quashed."*

14. The High Court sitting under Article 226 of the Constitution of India normally does not interfere into the concurrent findings of the two

authorities and re-appreciate the evidences but certainly when the punishment order shocks the conscience, the same has to be interfered with.

15. It also appears that the complainant, who was the landlord, was never examined. The Hon'ble Apex Court in case of **Hardwari Lal Vs. State of U.P. & Ors.**, reported in **(1999) 8 SCC 582** has clearly observed that failure to examine material witness would vitiate the entire departmental proceeding, as the same would be in violation of the principles of natural justice. The relevant paras of the said judgment reads as under:

> *"3. Before us the sole ground urged is as to the nonobservance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.*
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> *4. However, Shri Goel, the learned Additional Advocate General, State of Uttar Pradesh has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant."*

16. The same was reiterated by the Hon'ble Apex Court in the case of **Commissioner of Police, Delhi & Ors. Vs. Jai Bhagwan,** reported in **(2011) 6 SCC 376** that non-examination of the complainant during the

departmental proceeding has denied the delinquent of his valuable right to cross-examine and is thus nullity in the eyes of law.

17. Even in the criminal case Cr. Appeal No. 15 of 2020, the learned Sessions Judge, Gumla vide his order dated 05.05.2022, has been pleased to acquit the petitioner from the charges levelled against him which are identical to the charges levelled in the departmental proceeding. Though different yardsticks are there but since on identical charges, the petitioner has been acquitted in criminal case, the same carries weight and in that view of the matter also, the punishment of dismissal is not warranted.

18. In view of the aforesaid facts and circumstances, it appears that punishment of dismissal is too harsh which shocks conscience. As such, the impugned orders dated 01.12.2015 and 15.02.2016 being devoid of any merits are hereby quashed and set aside. In view of quashment of the aforesaid impugned orders, the matter is remitted back to the respondents to consider the case of petitioner for inflicting lesser punishment other than dismissal/ removal/ termination.

19. Resultantly, the writ petition stands disposed of.

20. Pending I.As., if any, stands closed.

(Dr. S.N. Pathak, J.)

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