

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6694 of 2008

Ajay Kumar Singh son of Sri Shaligram Prasad Singh, Resident of Block Gate, Banka, Police Station and District Banka.

... .. Petitioner/s

Versus

1. Canara Bank through the General Manager, I.R. Section, Head Officer, Bangalore.

2. Manager (U/S) Canara Bank, Regional Office, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate

For the Respondent/s : Mr. Rajan Ghoshrahe, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 02-08-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for

following reliefs:-

“1. That the petitioner prays for issuance of an appropriate writ/order/direction for quashing the order dated 16.2.2008 issued by Respondent No. 1 by which the petitioner has been dismissed from the Bank serving as Manager Canara Bank at Regional Office, Muzaffarpur.

The petitioner further prays for re-instatement after setting aside the impugned dismissal order and pay the consequential benefit to the petitioner.”

3. Petitioner while working as Manager, Bokaro

Steel City Branch during the period from 27.07.2002 to

01.03.2004, he is alleged to have abused his power in respect of



not keeping the question papers of CBSC Pre-Medical Entrance Test for the year 2003 under the double lock system. Petitioner is alleged to have removed one packet of question papers on 19.04.2003 in connivance with outsiders and it was kept back on 21.04.2003. Based on the aforesaid allegations, he was subjected to parallel proceedings. In so far criminal case is concerned, it is pending consideration before the jurisdictional forum.

4. The Respondent-Bank have initiated a disciplinary proceedings while invoking regulation 6 of Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (for short "Regulations, 1976"). Charges were framed on 08.11.2005. It was communicated to the petitioner on 05.04.2006 when he was under judicial custody during the intervening period from 09.08.2005 to 12.02.2007. Article of charges is accompanied by statement of imputation, list of three documents and list of witnesses-one witness. The petitioner submitted his explanation to the charge-memo on 10.04.2006. Thereafter, enquiry was concluded while holding that the alleged charges levelled against the petitioner were proved. To that effect enquiring officer submitted his report on 24.09.2007 to the disciplinary authority. The disciplinary authority on



receipt of the enquiring officer's report issued a second show cause notice on 05.10.2007. Petitioner is stated to have submitted his explanation on the enquiring officer's report read with the second show cause notice on 17.10.2007. In this backdrop, the disciplinary authority while imposing the penalty of dismissal from service by invoking Regulation 4(j) of Regulations, 1976 and suspension period has been treated as not on duty. Feeling aggrieved and dissatisfied with the order of the disciplinary authority dated 16.02.2008, petitioner preferred appeal before the appellate authority on 23.03.2008 and it was rejected on 13.04.2010. Hence, the present petition.

5. Learned counsel for the petitioner submitted that Regulation 6 of the Regulations, 1976 is in respect of procedure for imposing major penalty. In the enquiry, the enquiring officer had deviated from Sub-regulation 3 of Regulation 6 of Regulations, 1976 to the extent that along with article of charges three documents were cited whereas 37 documents were added (newly added documents). Such power is not vested with the enquiring authority. The disciplinary authority if Bank/Management intends to rely on other than the three documents in that event disciplinary authority should have invoked Sub-regulation 3 of Regulation 6 in providing



additional documents to be relied on in the enquiry to the petitioner. In support of the aforesaid contentions, learned counsel for the petitioner relied on Apex Court's decision rendered in the case of ***Roop Singh Negi Vs. Punjab National Bank*** reported in ***(2009) 2SCC 570*** (para 14) in which it is held that marking of documents should be in accordance with relevant procedure and it has been deviated with reference to identical Regulation. Therefore, the aforesaid decision of the Apex Court aptly applicable to the case in hand.

6. It is further submitted that petitioner was facing criminal proceedings. Therefore, he had requested the disciplinary authority/ enquiring authority to defer the departmental enquiry till criminal case is concluded. The same has not been appreciated by the authorities.

7. It is further contended that disciplinary authority relied on extraneous document to the enquiry proceedings, namely statement made under Section 164 of Cr.P.C. in the criminal proceedings have been taken into consideration while imposing penalty of dismissal from service. It is submitted that in terms of Regulation 7, scope of disciplinary authority is restricted which is relating to action on the enquiry report. The disciplinary authority is required to



examine 1 to 4 issues under Regulation 7. Therefore, relying on statement under Section 164 of Cr.P.C., while imposing penalty of dismissal from service is extraneous material which cannot be taken into consideration and it is beyond the scope of Regulation No. 7.

8. Per contra, learned counsel for the respondent resisted the aforesaid contention of the petitioner and submitted that even if 29 documents are ignored, 3 documents are sufficient to hold the charges levelled against the petitioner were proved. Therefore, there is no infirmity from the initiation of enquiry till rejection of the petitioner's appeal. Hence, no interference is called for in respect of impugned orders in the present writ petition.

9. Heard learned counsels for respective parties.

10. Undisputed facts are that the petitioner was subjected to parallel proceedings. Criminal proceedings is pending consideration before the jurisdictional forum. Disciplinary proceedings have been launched on 09.08.2005 while framing of article of charge under Regulation 6 of Regulations, 1976 and it was concluded in imposition of penalty of dismissal from service on 16.02.2008. Further, petitioner suffered order in appeal on 13.04.2010. Hence, the present



petition.

11. Learned counsel for the petitioner submitted that along with the article of charges only three documents have been cited and one witness. Whereas in the enquiry presenting officer has furnished 28 documents in addition to three documents which are extraneous documents other than three documents. It is not in accordance with the Regulation, 1976. Therefore, marking of extraneous documents is impermissible. The cited decision in the case of Roop Singh Negi (supra) in para 14 it is held under:-

“14. Undisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

In the light of the aforesaid principle laid down by the Apex Court the contention of the petitioner that



extraneous documents have been relied on by the Bank-respondent and it was not in accordance with the procedure known to the law. Accordingly, the aforesaid contention is accepted.

12. Learned counsel for the petitioner submitted that disciplinary authority while imposing penalty of dismissal from service relied on extraneous documents, namely, statement under Section 164 of Cr.P.C. furnished by the petitioner in criminal proceedings. Even the disciplinary authority has committed error in not restricting his order of penalty in terms of Regulation 7 (1-4). Apex Court in a decision of constitution Bench in the case of *The State of Mysore Vs. K. Manche Gowda* reported in *AIR 1964 SC 506* it is held that extraneous document cannot be taken into consideration by the enquiry authority or disciplinary authority. The decision of disciplinary authority in relying on statement under Section 164 Cr.P.C. is extraneous and it is not in terms of Regulation 7 of Regulations, 1976.

13. Learned counsel for the petitioner submitted that he had requested for deferring the disciplinary proceedings due to pendency of the criminal proceedings and it was not deferred. Aforesaid contention cannot be appreciated for the



reasons that time and again Apex Court has held that any parallel proceedings launched by an employer neither disciplinary proceedings nor criminal proceedings can be stalled for the reasons that disciplinary proceedings have been launched against an employee/ officer with reference to alleged misconduct and violation of Conduct Rules. In so far criminal proceedings is concerned, it is relating to an offence under Indian Penal Code or any other special law. Therefore, the aforesaid contention of the petitioner that the disciplinary authority/ enquiring authority should have stalled the departmental proceedings till disposal of criminal proceedings stands rejected.

14. Learned counsel for the respondent submitted that three documents which are cited along with the charge-memo suffice to hold that the charges levelled against the petitioner is proved and the three documents read with the proved charge suffice to impose major penalty of dismissal from service. The aforesaid contention has not been apprised by the Respondent- Bank Counsel with reference to material information which has been placed before the enquiring authority and how enquiring authority has considered.

15. At this stage, it is necessary to take note of



Apex Court decision rendered in the case of *Union of India & Others Vs. Dalbir Singh* reported in (2021) 11 SCC321 wherein the Apex Court held that Tribunal and Court should not re-appreciate the evidence in respect of disciplinary proceedings.

16. In the light of these facts and circumstances, the contention of the respondents stands rejected. In view of these facts, petitioner has made out a *prima facie* case so as to interfere with the impugned orders dated 16.02.2008 and 13.04.2010. Accordingly, the impugned orders dated 16.02.2008 and 13.04.2010 (Annexure- 1 and 14) are set aside.

17. During pendency of the present petition, petitioner is stated to have cross the age of retirement. Therefore, question of reinstating him is not warranted.

18. The matter would have been remanded to the enquiring authority to commence enquiry from the defective stage. However, such a situation is not warranted for the reasons that charge-memo was issued on 08.11.2005. It is not a case of commencing the enquiry from the defective stage. 'Defective' to the extent that charge-memo is not supported by complete 32 documents which were relied on in the enquiry. Therefore, it is not proper to remand the matter to the disciplinary authority to proceed afresh in the enquiry proceedings.



19. In the light of these facts and circumstances, respondent-Bank are hereby directed to regulate the period from 16.02.2008, the date on which petitioner was dismissed from service till the date of his retirement. Necessary monetary benefits shall be extended while calculating the same within a period of four months from the date of receipt of this order.

20. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	08.08.2022
Transmission Date	

