

(2018) 04 PAT CK 0107

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 16154 Of 2015

Neel Bhushan Kumar

APPELLANT

Vs

State Bank Of India
Through And Ors

RESPONDENT

Date of Decision: April 4, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226

Citation: (2018) 3 PLJR 78

Hon'ble Judges: Madhuresh Prasad, J

Bench: Single Bench

Advocate: Jitendra Prasad Singh, Anshuman Singh

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioner as also learned counsel for the Bank.

2. Petitioner has approached this Court for quashing of order dated 20.8.2014 (Annexure 8), passed by the Appellate authority (respondent no.2),

whereby punishment of dismissal without notice has been inflicted on the petitioner by the Disciplinary Authority vide office order dated 28.12.2013

(Annexure 7) in terms of memorandum of settlement dated 10.4.2002.

3. Learned counsel for the respondent bank has taken preliminary objection regarding maintainability of the proceedings. He submits that the petitioner

being a workman within the definition of the Industrial Disputes Act, 1947 (herein after referred to as "the Act"), should have first approached the

appropriate Authority under the said Act. Relevant objection is made in the counter affidavit filed on behalf of the respondent bank.

4. The brief undisputed facts leading to the filing of the writ petition are that pursuant to the examination conducted on 22.11.2009 for appointment of an assistant in the respondent bank the petitioner had appeared in the selection process. Having been found successful, he joined the service of the respondent bank. Upon his joining on 15.12.2010, he was posted in Nokha branch of Rohtas district. Some anonymous complaint had been received against the petitioner that he had not appeared at the examination and somebody else had impersonated him in the process of selection. Relying upon such complaint, the bank conducted internal investigation. The report of the internal investigation is at Annexure A to the counter affidavit and the same is dated 5.3.2011.

5. In order to ascertain whether the petitioner had actually appeared in the examination or not, the internal investigation officer has examined petitioner's signature and thumb impression and compared /verified the same with reference to the signature and thumb impression made at the examination center. Opinion of the investigation officer casts a doubt on the photograph of the petitioner. Regarding signature he has stated that signature on the call letter (Annexure II) also almost tallies, if seen with naked eyes, with the signatures taken on his statement/documents taken subsequently (Annexure III, IV and V). Regarding thumb impression, opinion of the Investigating officer was that the comments regarding similarity or otherwise of the thumb impression should be made by a technical expert only. On the basis of such findings, the Investigating officer submitted his conclusion that the report of the Forensic expert/GEQD on the issue is required to arrive at a definite conclusion.

6. The same has been obtained from the Central Forensic Science Laboratory, Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India, 30, Gorachand Road, Kolkata, which under covering letter dated 26.9.2012 (Annexure B to the counter affidavit) has submitted the report. Contrary to the recommendation of the Investigating officer, thumb impression had not been sent for technical/expert opinion and only petitioner's signature had been sent. Opinion on the same has been sent under the said covering letter. The opinion of the expert suggests that there

is a variation in the signature of the petitioner obtained for the propose of comparison with that of other documents.

7. Thereafter, one charge memo dated 21.6.2013 (Annexure 4) was served upon the petitioner. The Enquiry officer thereafter proceeded with the

enquiry and relying solely on the basis of the opinion of the hand writing expert, submitted by the report dated 23.9.2013 (Annexure 5), a conclusion

has been arrived at as follows:-

“FINDING OF ENQUIRY OFFICER

I, have perused prosecution/Defence documents, their written briefs and proceeding recorded in EPR to find out the fact of the allegations:

Since the person who actually wrote the written examination & qualified the written examination for appointment did not execute & signed

the documents pertaining to appointment. Therefore all the documents are forged and all statements made in document pertaining to CSE

employment in the Bank is false. The submission of defence that legal validity of an opinion of handwriting expert as an evidence must be

corroborated by other evidence, direct or circumstantial has no relevance in this case as the charge has been substantiated on the basis of

GDQD (Expert Agency) report which clearly states that “the person who wrote the blue enclosed signatures stamped and marked A1 to

A17 and S1 to S3 did not write the red enclosed signatures similarly stamped and marked Q1 and Q2.

The para 5(m) of Memorandum of settlement of Disciplinary Action Procedure for Workmen dated 10.04.2002 describes the acts and

omissions on the part of an employee of knowingly making false statement in any document pertaining to or in connection with his

employment in the Bank as Gross Misconduct.”

8. It is pointed out by the learned counsel for the petitioner with reference to the enquiry report, that the defence plea taken in response of allegation

that the hand writing expert, i.e., the author of the report dated 26.9.2012, has not testified, was not considered by the Enquiry officer. The defence

plea that the opinion of the hand writing expert per se could not have been made the basis of proof of impersonation when the author of the report had

not been examined has not been considered. The defence plea was that the opinion of the hand writing expert has not been corroborated by other

evidence. It is also contended that in terms of the internal investigation report dated 5.3.2011 the bank was obliged to take technical/expert opinion on

the petitioner's thumb impression, otherwise the whole purpose of obtaining thumb impression gets defeated. Another submission is that by doing so

grave prejudice has been caused to the petitioner as nobody knows what would have been the effect of such examination.

9. The petitioner has filed his reply to the second show cause before the Regional Manager, State Bank of India on 12.12.2013 (Annexure 6). He has

specifically raised the issue that the opinion of the handwriting expert was unreliable and that the author of the said report has not been called to testify

in support of the same. Thus the report could not have been relied upon by the Enquiry officer. This Court notices that non examination of the author

of the adverse handwriting expert opinion which is being relied upon also deprives the petitioner of his vital opportunity to cross examine the author of

the same.

10. It is also submitted by the petitioner in the response to the second show cause that he had given the signature and thumb impression on the Admit

card and Attendance sheet in the Examination Hall on 22.11.2009, but only the signature on the Admit card, marked Q1 and Q2 had been sent for

expert opinion and thus his thumb impression given on the Admit card and the Attendance sheet have not been dealt with in the report of the

handwriting expert. Learned counsel for the petitioner submits that thumb impression of the petitioner given on the Admit card and the Attendance

sheet should also have been sent for technical/expert opinion which would falsify the allegation against the petitioner. Merely on the opinion suggesting

the variation in the petitioner's signature, he has been inflicted with the extreme and harsh punishment of dismissal without notice.

11. This Court would notice that the Disciplinary authority has inflicted the punishment under his order dated 28.12.2013. Perusal of the same shows

that there is no consideration of the aforesaid points raised by the petitioner. The order passed by the Disciplinary authority is without any

consideration whatsoever with respect to the petitioner's plea regarding non examination of the author of the expert opinion against the petitioner

with respect to his signature, as also total non-consideration of the fact that his thumb impression on the Admit card as well as Attendance sheet have

not been sent to the Central Forensic Science Laboratory for expert opinion.

12. None of the pleas of the petitioner have been considered by the Disciplinary authority, though the order dated 28.12.2013 (Annexure 7) proclaims

to be a "speaking order". The cryptic consideration of the Disciplinary authority is as follows:-

"2. On consideration of points raised by you in personal hearing dated 12.12.2013. I found no reason to review the tentative punishment

and hence I confirm my earlier tentative order conveyed to you vide my above mentioned show-cause memorandum inflicting upon you the

punishment of "Dismissal without notice" in terms of paragraph 6(a) OF Memorandum of Settlement of Disciplinary Action for

workmen dated 10/04/2002."

13. One of the submissions made by the counsel for the bank is that the fraud vitiates the case of the petitioner. Such submission could have been

taken into consideration if the respondent bank had established the fraud in accordance with law observing procedural fairness and after considering

all the material on record, which has not been done. Mere allegation of fraud cannot vitiate the case of the petitioner.

14. It is prima facie evident that such an order showing total non consideration of the facts as also non application of mind by the Disciplinary authority

in rejecting petitioner's response without assigning any reason for rejecting the points raised in response to the second show cause, would not

subserve the Principle of Natural Justice. In light of the fact that order of Disciplinary Authority is grossly contrary to the Principle of Natural Justice

being a non speaking order, this Court is not inclined to entertain the preliminary objection regarding maintainability of the writ petition raised by the

learned counsel for the respondent bank.

15. Learned counsel for the petitioner submits that the impugned order of dismissal is in violation of the principle of the Natural Justice and the remedy

cannot be precluded by this Court while exercising the jurisdiction under Article 226 of the Constitution of India. Counsel for the petitioner while

submitting that such non-speaking and non reasoned order cannot be sustained has relied upon a decision in case of Sunil Soren Vs. The UCO Bank

through its General Manager and others, reported in 2014(4) PLJR 779. Paragraphs 13, 14 and 15 of the judgment are being reproduced herein:-

“13. Mr. Sinha is right in his submission while relying upon a judgment of this Court reported in 2000 (3) P.L.J.R. 64 (Chandradip Sinha

Vs. The State of Bihar & Ors.) to contend that the disciplinary authority was required to deal in his order as to why the defence of the

petitioner taken by him in course of the disciplinary proceeding and in his comments upon report of the enquiry officer was not acceptable.

14. I am of the view that such lapse on the part of the disciplinary authority not discussing the defence of the delinquent while passing the order amounts to violation of principles of natural justice.

15. The order of the disciplinary authority impugned in the writ application does not reflect application of mind on the comments of the

delinquent i.e. petitioner on the report of the enquiry officer. The impugned order of the disciplinary authority dated 31.03.2008 (Annexure-

6) therefore cannot be sustained and is accordingly quashed. It is also well settled that if the order of the disciplinary authority is

unsustainable on the ground of lack of reasons, the order of the appellate authority cannot fill up the lacunae.”

16. The petitioner had also filed an appeal against the said order of the Disciplinary authority. The same has also been rejected by order dated

20.8.2014 (Annexure 8), issued by the Appellate authority, the Deputy General Manager of the Bank. The same has reaffirmed the order of the

Disciplinary authority dated 28.12.2013. It also does not find consideration of the said points raised by the petitioner.

17. In view of the observations and findings recorded herein above, this Court would quash the order passed by the Disciplinary authority dated

28.12.2013 (Annexure 7) as also appellate order dated 20.8.2014 (Annexure 8). As a result of quashing of these two orders, the petitioner would be

entitled to reinstatement and all consequential benefits.

18. This order, however, shall not preclude the respondent bank to proceed against the petitioner from the stage of the second show cause.

19. The writ petition stands allowed to the extent indicated above.