IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12258 of 2001

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Sudarshan Singh, son of Sri Sukeshwar Prasad Singh, resident of Mohalla Shri Krishna Nagar, Reva Road, P.S. Sadar, Dist. Muzaffarpur.

.... Petitioner/s

Versus

1. Vaishali Kshetriya Gramin Bank, having its Head Office at Kalambagh Road, Muzaffarpur through its Chairman.
2. The Chairman, Vaishali Kshetriya Gramin Bank, Kalambagh Road, Muzaffarpur.
3. The Board of Directors, Vaishali Kshetriya Gramin Bank, Kalambagh Road, Muzaffarpur through its Chairman.
4. Shri Dinesh Sharma, son of not known, Area Manager-cum-Enquiry Officer, Vaishali Kshetriya Gramin Bank, Branch-Saraiya, Dist. Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Bank : Mr. Ajay Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 13-08-2015

No one appears for the petitioner. Learned counsel for the Vaishali Kshetriya Garmin Bank is present.

2. This court has carefully perused the records of this case wherein the petitioner has prayed for following relief:-

"1(i) To declare that the order dated 27.11.2000 of dismissal of the petitioner from bank service is vitiated for non-compliance of the principle of the natural justice as no legal procedure has been followed in conduct of the departmental enquiry concerning the petitioner.

(ii) Quashing the order of the respondent no.2 vide memo no. RRB/DAW & VIG/24/00-01/273 dated 27.11.2000 by which the petitioner has been dismissed from the bank's service (annexure-13).

(iii) Quashing the order of the respondent no.3 communicated to the petitioner vide memo no. RRB/HO/DAW&VIG/25/01-02/No.99 dated 30.8.2001 by which the appeal of the petitioner against the order dated 27.11.2000 of the respondent no.2 has been rejected on 18.8.2001 (Annexure-16).

(iv) Commanding the respondents to reinstate the petitioner and grant all consequential benefits to the petitioner including arrear, full salary minus subsistence allowance,

increments."

3. Mr. Ajay Kumar Sinha, learned counsel for the Bank explains that here is no procedural infirmity in conducting the enquiry or passing the impugned order by the disciplinary authority which also stands affirmed by the rejection of the appeal filed by the petitioner.

4. This Court from the order dated 15.10.2001 while admitting the writ application for final hearing would find that the only procedural infirmity pointed out by the petitioner was that he was not allowed to defend his case in a proper manner, inasmuch as, his application for allowing one Sri M.P. Karn, a Clerk-cum-Cashier of the Bank to defend him in the departmental proceeding having been rejected, he had been deprived of a reasonable opportunity to defend himself in the departmental enquiry. This aspect of the matter however has been explained by the respondents in the counter affidavit in paragraph nos. 7 to 10, which reads as follows:-

"7. That the petitioner wanted to engage one Sri M.P. Karn, Clerk-cum-Cashier as his defence representative which was not allowed. As per prevailing guidelines in case of officer the Disciplinary Authority may at his discretion allow the officer to be defended by another office of the Bank as such the petitioner, who was an officer, was not allowed to be defended by Sri M.P. Karn, Clerk-cum-Cashier. The petitioner was asked to name any officer of the Bank as his defence representative but he insisted for Sri M.P. Karn, Clerk-cum-Cashier only to delay the proceeding and on 27.10.1999 the Enquiry Officer observed in the proceeding that the matter is being delayed in this manner yet gave one more chance to the petitioner on his request to bring his defence representative on the next date i.e. 4.11.1999.

8. That on 4.11.1999 when the petitioner did not produce his *defence representative the Enquiring Officer proceeded ahead on which the management representative produced documents to be relied upon and requested for making the same as exhibits the petitioner started making noise and unruly behaviours and left the proceeding. The proceeding in the circumstance was adjourned. The petitioner in order to some how construct the proceeding filed complaint against the E.O. and presenting officer.*

9. That Enquiring Officer vide notice dated 21/12/1999 informed the petitioner that the next date of proceeding is 5.1.2000 and asked him to attend the proceeding failing which the proceeding will go ex-parte. The said notice was sent to the petitioner by registered post which he acknowledged to have received vide letter dated 29.12.1999.

10. That petitioner did not participate on 5.1.2000 despite notice to him as such the proceeding was held ex parte on 5.1.2000, 20.1.2000, 2.2.2000, 7.2.2000, 15.2.2000, 17.2.2000 and on 23.2.2000 when the proceeding was concluded."

5. As would be evident that the petitioner was an officer of the Bank and wanted himself to be defended by a Clerk cum Cashier. The guidelines relied by him in Annexure-2 also reads as follows:-

"10(F): DEFENCE REPRESENTATIVE: RIDER IV:

------- The role of the defence representative is to present the charge-sheeted employee's case, examine witnesses, raise objections to procedural lapses, if any, and sum up the case on behalf of the employees. The representative should not be allowed to give oral evidence on behalf of the chargesheeted employee nor should be he permitted to answer questions put by the enquiry officer to the chargesheeted employees. <u>In the case of an enquiry against an officer, the disciplinary authority may at his discretion allow the officer to be defended by another officer of the bank</u>."

(underlining for emphasis)

6. In view of the above provision which is more or less directory one, this Court will not find any error in the decision taken by the enquiry officer in refusing the petitioner to be defended by a Clerk-cum-Cashier, who was not an officer of the Bank.

7. As a matter of fact, from the averments made in the counter affidavit, as already quoted above, one thing will be clear that

the petitioner did not cooperate in the departmental proceeding and, as such, the departmental proceeding had to proceed and also conclude ex-parte. Once this aspect becomes clear, this Court will have no difficulty in now coming to a conclusion that the principles of natural justice were not followed in letter and spirit. In fact, the Bank, in order to ensure presence of the petitioner in the departmental proceeding, had also got repeated notices published in the newspaper but, if the petitioner did not choose to avail such opportunity, he cannot get the order of punishment set aside at least on the plea of violation of principle of natural justice.

8. Thus, when the petitioner had not appeared in the departmental proceeding and it was conducted ex-parte in respect of same very serious charge, the enquiry officer on the basis of evidence adduced on behalf of the Bank had found almost all the charges proved except charge no.7b & 9 which were not found to be proved. The disciplinary authority in fact, having supplied the copy of such enquiry report to the petitioner, had also given him an opportunity to the petitioner for appearing before him and give his explanation to the findings in the enquiry report. The petitioner had also appeared before the disciplinary authority on 22.11.2000 and he had sought to give his explanation, whereafter, the order of punishment by way of dismissal from service was passed in respect of the proven charges. The

petitioner, thereafter, had filed his appeal and the appeal also was dismissed on 18.8.2001 which was communicated to the petitioner on 30.8.2001.

9. All these things again have been also clearly stated in the counter affidavit as would be evident from paragraph nos. 11 to 19, which for the sake of clarity and convenience is quoted herein below:-

> *"11. That the Enquiring Officer then submitted its report finding the petitioner guilty of all charges except charge no.7(b) and 9.*
>
> *12. That the petitioner was given copy of the Enquiry Report vide Annexure-10 asking him to make his submission by 28.9.2000.*
>
> *13. That the petitioner submitted his comments vide Annexure 10/1 and asked for de-novo enquiry alleging violation of natural justice. It is relevant to mention here that he offered no comments on the merit of the findings arrived by the Enquiry Officer.*
>
> *14. That the Disciplinary Authority after considering the enquiry report, the submission of the petitioner over the Enquiry Report agreed with the findings of the enquiry officer and this proposed penalty of Dismissal for Ban's service for charges no.1 to 6 and for charge no.8 the proposed penalty was "Reduction of Four increments in the incremental scale." Thus a consolidated penalty was proposed vide Annexure-11 and the petitioner was asked to file show cause on proposed penalty on or before 18.10.2000.*
>
> *15. That the petitioner in response to the second show cause notice on proposed penalty instead of making any submissions on the question of proposed penalty made submission on the merit of the findings of the enquiry officer and again prayed for denovo proceeding which cannot be considered to be a show cause on the question of proposed penalty as such the disciplinary authority vide order dated 27.11.2000 contained in Anneure-13 confirmed the proposed penalty and imposed the proposed consolidated penalty "Dismissal from Ban's Service."*
>
> *16. That the petitioner against the order aforesaid preferred appeal before the Board of Directors challenging the same on the ground that the proceeding has been conducted in violation of principle of natural justice.*
>
> *17. That the appellate authority after considering the entire materials on record rejected the appeal in its meeting dated 18.8.2001, the decision of which has been communicated to the petitioner vide Annexure-16.*
>
> *18. That the petitioner has been proved guilty of various charges of defalcation besides other misconduct in a*

regularly conducted departmental enquiry following the rules of natural justice. The findings recorded by the enquiry officer is based on unimpeachable documentary and oral evidence produced by the presenting officer before the enquiry officer. The petitioner initially wanted to delay the proceeding for somehow or other but when the enquiry officer decided to proceed ahead he kept the proceeding in the midst and thereafter he absented himself despite notice to him vide Annexure-A that if he does not appear on 05.01.2000 the proceeding will proceed ex parte in his absence. Thereafter the proceeding was conducted on various dates and the same was finally concluded on 23.02.2000. The enquiry officer submitted his report finding him guilty of all charges except two of them. The copy of enquiry report was given to him and he made his submission over the same considering which the disciplinary authority agreed with the findings of the enquiry officer and found him guilty of certain charges.

19. That the petitioner was given opportunity of second show cause on question of proposed penalty in response of which he again made submission that the enquiry was conducted in unfair manner instead of making any submission on the question of penalty which is evident from the petitioner's show-cause contained in Annexure-12, the petitioner has no where made any submission on the question of proposed penalty."

10. The petitioner has however not filed any reply to the counter affidavit and, therefore, there will be no difficulty in accepting the averments made in the counter affidavit.

11. As noted above, this court does not find any procedural infirmity in the impugned order of dismissal of the petitioner who, being an officer of the Bank, was supposed to maintain the utmost integrity and devotion to his duty.

12. The charges against the petitioner in the departmental proceeding was that he had not only manipulated the figures of total cash received/paid from the bank's customers on different dates and had defaulcated a sum of Rs. 5, 03,821/-, but had also fraudulently

withdrawn by way of fictitious withdrawal/without withdrawals from the Branchy showing payment in cash payment register by him in connivance with his the then Clerk-cum-Cashier Sri G.C.Mukharjee over a sum of Rs. 70,000/- apart from defaulcation amount around Rs. 10 lacs as well as jeopardizing interest of the bank leading to huge loss to the bank. Once these charges were found to be proved by the Inquiry Officer and the disciplinary authority for such proven charges had inflicted the order of dismissal, this Court cannot sit as an appellate authority as with regard to finding recorded by the Inquiry Officer and the disciplinary authority.

13. Law, in this regard has been well settled that the courts are not required to interfere if a case is made by a delinquent that the evidence against him is not sufficient to impose any punishment. The Apex Court in that regard in the case of ***Union of India & Ors. vs. B.K.Srivastava*** reported in ***AIR 1998 SC 300***, following its earlier judgments in the case of ***Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh & Ors.*** reported in ***AIR 1997 SC 1908*** and again in the case of ***High Court of Judicature at Bombay v. Uday Singh*** reported in ***AIR 1997 SC 2286*** as well as in the case ***Govt. of Tamil Nadu v. A.Rajapandian*** reported in ***AIR 1995 SC 561***, had laid down the law that if there is some evidence then the Court or the Tribunal in exercise of its power of judicial review cannot sit as a court of appeal

and interfere with the punishment by reassessing the evidence on its own.

14. Finally, as with regard to quantum of punishment this Court must note that the petitioner a Branch Manager of Bank was facing some very grave charges relating to causing financial loss and embezzlement of the fund to the Bank. Way back the Apex Court had clarified that in the case of Bank employee the defalcation or embezzlement of public money should not be treated lightly and leniently either by the authorities of the Bank or by the Courts while exercising power of judicial review against the order of punishment. Reference in this connection may usefully be made of the judgment of the Apex Court in the case of ***Chairman and Managing Director, United Commercial Bank and Others vs. P.C. Kakkar,*** reported in ***(2003)4 SCC 364,*** wherein the Apex Court following its earlier judgment in the case of ***Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik***, reported in ***(1996) 6 SCC 69***, had held as follows:

> *"14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, reported in (1996) 6 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its*

officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

15. The aforesaid view of the Apex Court has been followed without exception laying down a clear law that in case of misconduct against a Bank Officer involving his integrity the matter should not be treated lightly and/or leniently by the courts. In the case of ***Ganesh Santa Ram Sirur vs. State Bank of India and Anr.,*** reported in ***(2005)1 SCC 13****,* it was held as follows:

"34. The Bank Manager/Officer and employees of any Bank, nationalised/or non-nationalised, are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC vs. Hoti Lal reported in 2003(3) SCC 605. Wherein this Court has held as under (SCC p.614, Para 10):-

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

16. Yet again in the case of ***Canara Bank Vs. V.K. Awasthy*** reported in ***(2005)6 SCC 321,*** the same view was reiterated and so was done also by the Apex Court in the case of ***State Bank of India & Anr. vs. Bela Bagchi and Others***, reported in ***(2005)7 SCC 435,*** wherein the law in this regard was laid down in the following words:

> *"15. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, reported in (1996) 9 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance".*

17. In the case of ***Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain,*** reported in ***(2005)10 SCC 84,*** while dealing with the case of disciplinary proceedings and punishment against a Bank Officer the Apex Court had again followed the same principle.

18. There would be infact no need to multiply the authorities on the subject, inasmuch as the same principle was consistently followed again by the Apex Court in the case of ***State Bank of India & ors. vs. Ramesh Dinkar Punde ,*** reported in ***(2006)7***

SCC 212 and also in the case of ***State Bank of India & ors. vs. S.N.Goyal,*** reported in ***(2008)8 SCC 92,*** wherein while rejecting the plea of a lesser punishment in relation to similar misconduct of a Bank Officer involving misappropriation/ embezzlement of fund it was held as follows:

> *"41. At the relevant point of time the respondent was functioning as a Branch Manager. A Bank survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."*

19. In the case of ***General Manager (P), Punjab & Sind Bank and Others vs. Daya Singh***, reported in ***(2010)11 SCC 233***, the role of Bank Manager in exercise of his official function and exercising his power with honesty and integrity was summed up in the following terms:

> *"26. In a number of cases including State Bank of India vs. Bela Bagchi, reported in (2005) 7 SCC 435, this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner.*
> *27. In Damoh Panna Sagar Rural Regional Bank's case, reported in (2005) 10 SCC 84, the Manager of a Bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorized withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent*

had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. Inspite of a well reasoned order by the Inquiry Officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments."

20. In view of the aforesaid discussions, this Court is of the considered view that there is no merit in this writ application and it is, accordingly, dismissed.

21. There will be, however, no order as to costs.

(Mihir Kumar Jha, J)

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