IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8359 of 2011

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1. Lalan Kumar Mishra Son Of Late Gopi Kant Mishra Resident Of Mohalla-Rajbari, Khirnighat Road, P.S.-Barari, District-Bhagalpur.

.... Petitioner/s

Versus

1. Punjab National Bank, Bhikhaji Cama Place, New Delhi-110066 Through Its Chairman.
2. Chairman, Punjab National Bank, Bhikhaji Cama Place, New Delhi-110066.
3. Assistant General Manager, Circle Head-Cum-Appellate Authority, Punjab National Bank, Circle Office, Ramchandrapur, Biharsharif, District-Nalanda.
4. Chief General Manager-Cum-Disciplinary Authority, Punjab National Bank, Hrd Section, G.M. Road, Circle Office, Darbhanga-886004.
5. Regional Manager, Punjab National Bank, Regional Officer, Hrd Section, Darbhanga.
6. Senior Manager-Cum-Enquiry Officer, Punjab National Bank, Branch Office, Bhagalpur, District-Bhagalpur.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gyanand Roy
For the Respondent/s : Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

11 22-07-2015 The petitioner, who was in Bank service, seeks quashing of the order dated 30.3.2010 (Annexure-1) passed by the Chief Manager cum Disciplinary authority, Punjab National Bank as well as order dated 26.2.2011 passed by the Assistant General Manager cum Appellate Authority awarding punishment of compulsory retirement from service but without disqualification from future employment as per clause 6.

2. The petitioner initially joined the post of Clerk-cum-

Cashier in Punjab National Bank (hereinafter referred to as 'the Bank') in January, 1981. While the petitioner was posted as Computer Operator in Bhagalpur Branch of the Bank, the Regional Manager sought an explanation by letter dated 27.11.2007 (Annexure-2) as to why disciplinary proceeding be not initiated against him. The petitioner submitted his explanation on 24.12.2007(Annexure-4). Not being satisfied with the explanation, the disciplinary authority cum Chief Manager served upon the petitioner a charge sheet dated 30.12.2008 containing the following two charges:

> *"Charge 1. You got your leave encashed twice each time for thirty days privilege leave, first time on 12.12.1997 and second time on 10.08.1999 under the same four year block of 15.01.1997 to 14.01.2001. Also you did not submit any LFC TA Bill.*
>
> *Charge No.2. You got encashment of one month's privilege leave on 05.04.2003 for LFC but did not submit any LFC TA Bill.*
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> *Your above acts constitute GROSS MISCONDUCT in terms of Clause 5(j) of Bipartite Settlement dated 10.04.2002."*

3. The petitioner filed his statement of defence on 10.1.2009. His case is that he is innocent and the mistake if any is all bonafide and the same would not amount to misconduct in terms of clause 5(j) of Bipartite Settlement dated 10.7.2002. The statement of defence dated 10.1.2009, submitted by the petitioner

was not accepted and the disciplinary authority decided to hold departmental enquiry by order dated 3.2.2009. One P.K. Jha, Sr. Manager, Punjab National Bank was appointed as Conducting Officer, whereas one Rajiv Kumar Singh of Barari Branch of Punjab National Bank was appointed as Presenting Officer. According to the petitioner, the mistake, if any, was an error or a lapse, and there was no intention to cheat the Bank or to solicit any pecuniary gain. The preliminary hearing of the departmental enquiry was conducted on 18.3.2009 and subsequently on 24.3.2009, 27.3.2009, 2.4.2009, 15.5.2009, 22.5.2009, 2.6.2009 and 17.6.2009. The management examined one Sundar Mandal as its witness, whereas the petitioner engaged one G.P. Tiwary as defence representative. The management witness was examined on 2.6.2009 and the defence was given an opportunity of cross-examination. The defence examined Shri Ghyan Shankar Pandey in support of his case on 15.7.2009.

4. The Enquiry Officer on closure of the enquiry submitted his report to the Chief Manager cum Disciplinary authority who got served the copy of the enquiry report on the delinquent for his response (Annexure-10). The petitioner submitted a detailed representation in support of his defence. The disciplinary authority not being satisfied with the explanation of the petitioner

held him guilty of charge for gross misconduct as per clause 5(J) of Bipartite Settlement, 2002. He further directed the petitioner to appear before him for personal hearing in his office at Circle Office, Darbhanga on 25.3.2010 at 11 A.M. along with his defence representative to make his submission why the proposed punishment (Annexure-12) of compulsory retirement be not imposed. After considering the representation of the petitioner as well as after hearing his representative, the disciplinary authority awarded punishment of compulsory retirement under clause 6 of the Bipartite Settlement dated 10.4.2002. The relevant extract of punishment contained in impugned order dated 30.3.2010 (Annexure-1) is as follows:

> *"Be compulsorily retired with superannuation benefits, i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment" as per clause 6(c) of the Bipartite Settlement dated 10.04.2002".*

5. Being aggrieved, the petitioner preferred an appeal before the Circle Head cum Appellate Authority, Punjab National Bank which too was rejected on 26.2.2011 after giving personal hearing to the petitioner.

6. The petitioner has challenged the impugned order of punishment on a number of grounds. He submits that the

proceedings continued in violation of principles of natural justice, inasmuch as he was not provided documents sought for to make an effective reply. There is no allegation of embezzlement of fund or one of moral turpitude or one of loss of integrity. Further more, the term misconduct implies a wrongful intention and not a mere error of judgment or a bonafide mistake. In support of his submissions, he relied upon a judgment in the case of Ravi Yashwant Bhoir vs District Collector, Raigad & Ors reported in 2012(3) PLJR SC 86.

7. So far as Charge No.1 is concerned, the petitioner submits that he got leave encashed on 12.12.1997 against 30 days of privilege leave, which was his entitlement. However, he could not submit T.A. Bill as he traveled on foot to Deoghar and expenses incurred on travel was trifle. So far as encashment of another 30 days privilege leave within the same four years block, which was not permissible, his explanation is that he does not remember the circumstances in which he took the privilege leave.

8. As per Charge no.2, the allegation is that though the petitioner took one months' privilege leave on 5.4.2003 for L.F.C., but did not submit any T.A. Bill. The explanation of the petitioner is that while he was returning from Dhanbad, he became victim of pick pocketing of tickets and money in the Bus

and as such could not submit T.A. Bill. The explanation of the petitioner did not find favour with the disciplinary authority as well as appellate authority.

9. On the other hand, the case of the Bank is that in the span of one blocks of four years, the petitioner twice availed L.F.C. and encashed the same, which is not permissible in law. Further more, no T.A. Bill was submitted. According to the Bank, the incumbent Incharge, who sanctioned L.F.C. to the petitioner twice in the same block of four years i.e. between 15.1.1997 to 14.1.2001, was also at fault. Again as per the respondent Bank, the petitioner first encashed the privilege leave on 12.12.1997 and second time on 10.8.1999, though he could have encashed the privilege leave only once between those years.

10. He next submits that charge no.2 has also been rightly found to be duly proved as the petitioner took privilege leave on 5.4.2006 for L.F.C., but admittedly did not submit any L.F.C. T.A. Bill. The explanation of the petitioner that he was pick pocketed is not believable in absence of any evidence.

11. With respect to the plea of non-supply of relevant documents, it is the case of the Bank that all the documents relevant for the decision making process was given to the petitioner and as such non-supply of some documents not relied

upon, would not vitiate the enquiry proceeding. In support of its submission, the Bank relied upon a decision reported in the case of ***Syndicate Bank & Ors vs Venkatesh Gururaro Kurati, reported in 2006 (1) Supreme 582***.

12. I have heard counsel for the parties.

13. I find that the disciplinary proceeding has been conducted in accordance with law and the petitioner was given an opportunity at all required stage to explain his case. So far as charge no.1 is concerned, there is no specific denial that he did not encash L.F.C. twice within the same four years block between 15.1.1997 to 14.1.2001, which was unlawful. The explanation that he does not remember the circumstances in which second leave encashment was taken within the same four years block is not tenable. Admittedly the petitioner did not submit L.F.C. T.A. Bill. Though the petitioner had given some explanation for not submitting T.A. Bill so far as encashment of leave in 1997 is concerned, there is virtually no explanation with respect to non-production of T.A. Bill of second leave encashment of the year 1991. As such, I find that the respondents have rightly held Charge No.1 duly proved.

14. The petitioner next submits that even assuming that Charge No.1 is duly proved, the same would not amount to misconduct.

15. As per the provisions of Tripartite agreement "misconduct" would also include any act prejudicial to the interest of the Bank. I find that the act of the petitioner in encashing the L.F.C. twice within same four years block gave unlawful gain and consequently caused loss to the Bank.

As per Oxford Advanced Learner's Dictionary "**misconduct**" means unacceptable behaviour, especially by a professional person.

As per Black's law Dictionary (7th Edition) "**misconduct**" means unlawful or improper behaviour. An affirmative act of misrepresentation or concealment of a material fact.

16. In my view the conduct of petitioner would amount to misconduct. Thus, it is difficult for me to accept the contention of the petitioner that his act would not amount to misconduct.

17. Charge No.2 relates to non-submission of T.A. Bill, though one month's privilege leave was encashed on 5.4.2003 under L.F.C. It is necessary that the employee encashing privilege leave should produce T.A. bill. It is not the case of the respondent Bank that the petitioner was not entitled to one month's privilege leave, but the allegation is that he did not submit L.F.C. T.A. Bill. The petitioner's defence is that he was pick pocketed while

returning from Dhanbad in a bus, which rendered it impossible to produce the ticket.

18. So far this charge is concerned, the allegation is of not furnishing T.A. Bill. It is not the case of the respondents that the petitioner charged higher T.A. Bill or he forged any T.A. Bill. The Presenting Officer also stated in his report submitted to the Enquiry Officer that there was no intention on the part of the delinquent to jeopardize the bank interest. In such circumstances, I am inclined to give benefit of doubt that the tickets carried by him may have been pick pocketed during his Bus journey while returning from Dhanbad. As such I differ with the findings of respondents and hold him not guilty of Charge No.2.

19. The petitioner next contended that non-supply of some documents has prejudiced his defence does not have any substance and is accordingly rejected as it has been categorically asserted by the respondents that all relevant documents have been supplied to him.

20. As I have held the petitioner of not being guilty of one of the two charges e.g. Charge No.2, I remit the matter to the Disciplinary authority for fresh consideration on the order of quantum of punishment and for the said purpose, I set aside both the orders dated 30.3.2010 passed by the Chief Manager cum

Disciplinary Authority of the Bank as well as order dated 26.2.2011 passed by the A.G.M. cum Appellate Authority awarding punishment of compulsory retirement. The status as existing on 30.3.2010 is restored. It is expected that the Disciplinary authority would pass fresh order on the quantum of punishment within two months from the date of receipt/production of a copy of this order.

21. In the result, this writ application is allowed to the extent indicated above.

(Samarendra Pratap Singh, J)

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