

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.9590 of 1998**

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Razia Fatma Naqvi, wife of late S.M. Razi Naqvi, resident of Mohalla Dahiyawan,  
P.S. Chapra, District, Saran.

.... .... Petitioner/s

Versus

1. The Union Bank of India , through its Managing Director, 239 Backbey  
Reclamation, Nariman Point Mumbari
2. The Disciplinary Authority, Department of Personnel, I. R. Section, Central  
Office, Union Bank of India, Nariman Point, Mumbari
3. The Appellate Authority/Deputy General Manager (P), 239, Becbey  
Reclamation, Nariman Point, Mumbari-400021

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s :                Mr. R.N.Mukhopadhy,  
                                                      Mr. Vishwa Nath Ram &  
                                                      Mr. Md.Nazir Ansari Advocates

For the Respondent/s :                Mr. Shailendra Kumar Sinha

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

**ORAL JUDGMENT**

**Date: 25-02-2015**

1. This writ application under Article 226 of  
the Constitution of India was filed by S.M. Razi Naqvi,  
who died during the pendency of this application and  
has been substituted by his wife, the present  
petitioner.

2. An order passed by the Deputy General  
Manager (P), Union Bank of India, Mumbai/appellate  
authority, dated 13.07.1998 communicated through  
letter, dated 25.07.1998, whereby the appeal of the  
original petitioner ( since deceased) against



imposition of punishment by the disciplinary authority of removal from service has been rejected. The order passed by the disciplinary authority dated 23.03.1991, imposing punishment of removal from service is also under challenge, in the present application.

3. For convenience and clarity particularly when original petitioner is no more he is being referred to in the present judgment as Mr. Naqvi.

4. Mr. Naqvi was initially appointed as Clerk and subsequently promoted to the post of Branch Manager ( J.M.G-I). He was posted in Pagra Nawada Branch, Samastipur in the year 1978. On 04.03.1982, he was placed under suspension in contemplation of a departmental proceeding. With the issuance of charge-sheet through memo No. 11778/84, dated 21.11.1984, a disciplinary proceeding was initiated against him on the charge of certain misconduct.

5. In view of the nature of the order which I intend to pass in the present judgment, I consider it apt to extract hereinbelow the articles of charge and

the statement of allegation as contained in the said charge-sheet:-

"Articles of charge

*Shri S.M. R. Naqvi is hereby charged of having committed the following misconducts during his tenure as Branch Manager of Pagranawada branch:-*

1. *That he failed to take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence.*
2. *That he defrauded the Bank to the tune of Rs.1,500/- by misusing the official power of the Branch Manager conferred on him and acted other wise than in his best judgment.*

*A detailed statement of allegations is annexed herewith."*

"Statement of allegations

*The following acts of omission and commission are reported against Shri S.M. R. Naqvi:-*

*That during his tenure as Branch Manager at Pagranawada branch, he disbursed a loan of Rs. 1500/- on 1.11.1980 under the DRI Scheme to a fictitious person named Shri Ramchandra Rai, under guarantee of another fictitious person Shri Moahn Singh. The loan amount has not been adjusted and the Bank has been put to loss of Rs.1500/- and interest thereon."*

6. He was called upon to show cause in response to the charges, within a period of seven



days which he did. Denying the charge, Mr. Naqvi asserted in his reply that the said D.I.R. loan was paid to Ramchandra Rai of village Pagra Nawada after proper enquiry and investigation and the loan was sanctioned on the request of the local village social worker. He also asserted that payment of loan of Rs. 1500/- was made by the Head Cashier upon proper acknowledgment on the back to the cash voucher. He pleaded that his successor manipulated and developed a false and imaginary case by affixing photograph of another person viz. Sultan Ahmad, a DIR loanee in order to make out a case that the said loan was disbursed to a fictitious person.

7. Be that as it may, this is not in dispute that the Inquiry Officer submitted his report, on 14.12.1985 exonerating Mr. Naqvi of the charges framed against him, to the following effect:-

*" I, therefore, hold Shri Naqvi guilty of the following charges only: "that he failed to take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost devotion."*  
*I did not find Shri S.M. R. Naqvi*

*guilty of the following charges on the basis of observation made by me in the preceding paragraphs.*

*1. That he failed to discharge his duties with utmost integrity, honesty and diligence.*

*2. That he defrauded the bank to the tune of Rs. 1500/- by misusing the official power of the Branch Manager conferred on him and acted otherwise than his best judgment."*

8. He recorded in his report, specifically, that the allegation against Mr. Naqvi that during his tenure as Branch Manager at Pagra Nawada Branch, he disbursed the said loan of Rs. 1500/- under DIR scheme to a fictitious person, namely Ram Chandra Rai another guarantor of another person Shri Mohan Singh could not be proved by the Management and, therefore, he could not be held guilty of not discharging of his duty with utmost integrity, honesty and diligence.

9. The disciplinary authority, however, differed with the finding recorded by the Inquiry Officer, whereby Mr. Naqvi was not held guilty of defrauding the Bank to tune of Rs. 1500/- and came



to an opinion that he was guilty of all the charges. Through letter, dated 13.02.1986, the notes of disagreement were caused to be served by the disciplinary authority, asking Mr. Naqvi to reply as to why, punishment of dismissal from service be not imposed against him. The said notes of disagreement were replied by him. The disciplinary authority, however, rejected his reply on the notes of disagreement and holding Mr. Naqvi guilty of all the charges imposed upon him punishment of dismissal from service by an order, dated 20.6.1986. Mr. Naqvi thereafter, preferred an appeal against the said order before the appellate authority, which stood dismissed by an order, dated 21.07.1987.

10. Aggrieved by the order of dismissal and the order passed by the appellate authority, Mr. Naqvi preferred a writ application before this Court registered as CWJC No. 6094 of 1997. This Court allowed the writ application vide order dated 22.01.1991 in the following terms:-

*"From a bare perusal of the order (Annexure-1) it appears that the*



*Disciplinary Authority while passing the impugned order has considered the facts regarding these three cases. it is very difficult to say that while recording the finding that charges have been proved, he has not taken into consideration the facts relating to these three cases. At least this much is clear that pendency of these three cases shad prejudiced the mind of the disciplinary authority at the time of taking the decision. Since the disciplinary authority has taken into consideration extraneous matters before awarding the punishment of dismissal, in our view, the order of dismissal cannot be allowed to be maintained and, consequently, the order passed by the appellate authority becomes also unwarranted.*

*In the result, this application is allowed and the orders contained in Annexures-1 and 2 are quashed. Now the disciplinary authority will apply its mind afresh to the enquiry report and pass order in accordance with law. In the circumstances of the case, we direct that the parties shall bear their own costs." (Emphasis added)*

11. The disciplinary authority, in the light of observation of this Court in the judgment and order dated 22.01.1991, passed an order dated 23.03.1991 again imposing punishment of his removal from service of the Bank. The petitioner again approached this Court challenging the said order, dated



23.03.1991 by filing an application under Article 226 of the Constitution of India, giving rise to CWJC No. 5498 of 1991. This Court disposed of the aforesaid writ application vide order dated 08.12.1994, with a liberty to the petitioner to prefer an appeal against the order of removal from service from 23.03.1991. This Court, however, directed the Bank to pay Mr. Naqvi, entire salary for the period 20.6.1986, the date of initial order of dismissal till 23.03.1991, when subsequent order of removal from service was passed. Mr. Naqvi preferred an appeal accordingly, in terms of the order of this Court, dated 08.12.1994 on 23.01.1995. The Bank in the meanwhile, had preferred review application before this Court, giving rise to Civil Review No. 3 of 1995, which came to be dismissed on 27.03.1995. The appellate authority by an order, dated 05.05.1995 rejected the appeal. Mr. Naqvi again filed a writ application, giving rise to CWJC No. 4948 of 1995 challenging the order, dated 23.03.1991, of removal from service and order, dated 05.05.1995, rejecting his appeal by the appellate

authority. This Court by an order, dated 19.03.1998, allowed the writ application on the ground that the appellate order was non-speaking. The Court remanded the matter back to the appellate authority for passing an order afresh.

12. The appellate authority after giving Mr. Naqvi an opportunity of personal hearing, dismissed the appeal by an order, dated 30.07.1998 which has been brought on record by way of Annexure-1 to the writ application. It is in the background of these facts that the present writ application has been filed challenging the said order, dated 30.07.1998 passed by the appellate authority rejecting the appeal preferred against the order of removal from service, dated 23.03.1991, passed by the disciplinary authority. The order, dated 23.03.1991 passed by the disciplinary authority imposing punishment of removal from service, is also under challenge.

12. In the meanwhile, during the pendency of this application, Mr. Naqvi died on 21.12.2004 and accordingly, came to be substituted by his widow

Razia Fatma Naqvi, the present petitioner.

13. Mr. R.N. Mukhopadhyay, learned counsel appearing on behalf of the petitioner, assailing the order passed by the disciplinary authority has submitted that it suffers from non application of mind. He contends that earlier, while imposing harsh punishment of dismissal from service in the order, dated 20.6.1986, the disciplinary authority had taken extraneous materials into consideration for the purpose of imposing punishment. This had led to quashing of punishment order by this Court, by its judgment and order, dated 22.01.1991. A Division Bench of this Court, he contends, had specifically observed that certain facts which were not there on record of the disciplinary proceeding and part of the charges were taken into account by the disciplinary authority, earlier, which had prejudiced his mind at the time of taking of the decision. Upon the matter being remanded back to the disciplinary authority, by this Court, for the purpose of passing an order afresh, the disciplinary authority simply removed from its



order, reference to those facts, exception to which had been taken by this Court in its order dated 22.01.1991. He has submitted that the disciplinary authority had passed harsh order of dismissal from service, being swayed away by extraneous materials and, therefore, ought to have taken a lenient view in the matter of imposition of punishment on remand of the matter by this Court. He contends that though there was no proof of ill-motive or deliberate misconduct by any permissible standard, even on the basis of preponderance of probabilities the disciplinary authority imposed upon Mr. Naqvi harsh punishment of dismissal from service, which is evidently disproportionate to the charge levelled against him. He has submitted that evidently, Mr. Naqvi continued his service up to 23.03.1991. Had he been in service, he would have attained the age of superannuation on 31.01.1995. The effect of imposition of harsh punishment of removal from service is that Mr. Naqvi and his dependents stood deprived of all the pensionary benefits admissible

under the service Rules & Regulations of the Bank. He has further submitted that the appellate authority has also not given due consideration to the points which had been raised by Mr. Naqvi in his memo of appeal.

14. I have extracted, at the very outset, the charge which was framed against Mr. Naqvi. The gravest of the charges against him was that the loan of a sum of Rs. 1500/- advanced to a loanee who was found to be a fictitious person. The Inquiry Officer had the occasion to take evidence of witnesses and documents produced by the Management in support of the charge in course of the enquiry. He arrived at a finding that the charge of dishonesty and lack of integrity against Mr. Naqvi and that of advancing loan to a fictitious person could not be proved against him. It is true that the disciplinary authority served upon Mr. Naqvi, the tentative notes of disagreement from the findings of the Inquiry Officer forming his own opinion with respect to the charges against Mr. Naqvi, which were not found proved on the basis of materials on record of the departmental enquiry, by the Inquiry

Officer.

15. Mr. Naqvi was given opportunity to deal with the said notes of disagreement which he had availed.

16. In the background of the facts as noted above, it is difficult to uphold the contention of Mr. R.N. Mukhopadhyay, learned counsel appearing on behalf of the petitioner that there has been any major procedural lapse prejudicing the case of Mr. Naqvi in course of departmental proceeding. As a matter of fact, there is no pleading on record to demonstrate that there was any such procedural lapse which prejudiced the case of the employee.

17. However, I find substance in the submission made on behalf of the petitioner that the punishment imposed against Mr. Naqvi was shockingly disproportionate to the gravity of charge levelled against him. It was not the charge against Mr. Naqvi that he had misappropriated the amount for his personal gain. Further, it has not been denied by the Management that before initiation of the present

proceeding, Mr. Naqvi was ever proceeded against, departmentally.

18. There cannot be any doubt over the proposition that is completely within the domain of the disciplinary authority to come to a conclusion as to what punishment would be suitable for a particular misconduct against an employee. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not normally interfere with the quantum of punishment, once it comes to a conclusion that there has not been any procedural lapse in holding the departmental enquiry, having the effect of violation of principles of natural justice or fair play and that the conduct of an employee comes within the ambit of "misconduct" for the purpose of taking disciplinary action. At the same time, this Court may, in appropriate cases interfere with the punishment, if it is found to be unduly harsh or so disproportionate to the offence as to shock conscience of this Court. Any punishment must be commensurate with the gravity of misconduct. A

punishment which is shockingly disproportionate would be arbitrary and, therefore, violative of Article 14 of the Constitution of India.

19. In the present case, I am of the view that the punishment imposed upon Mr. Naqvi of removal from service on the charge that the loanee of DIR loan disbursed by him in his capacity as Branch Manager, was found to be fictitious, in view of the contention that the said amount has since been repaid and there has been no loss to the Bank. Nothing has been brought to my notice on the basis of which it can be said that there was any ill motive of the petitioner behind disbursement of the said loan amount having the effect of any personal gain to him.

20. The fact that the extreme punishment of removal from service shall have the effect of forfeiture of pensionary benefits at the fag end of service of Mr. Naqvi makes me to arrive at a conclusion that the punishment upon Mr. Naqvi was disproportionately harsh.

21. Ordinarily, after quashing the order of the



disciplinary authority and the appellate authority, for the reasons aforesaid, I would have remanded the matter back to the disciplinary authority to reconsider the question of quantum of punishment afresh. However, in the facts and circumstances of the case, I leave it to the appellate authority, to reconsider the question of quantum of punishment and pass an order afresh, upon the appeal preferred by Mr. Naqvi.

22. Situated thus, and in view of the discussions above, the order dated 13.07.1998 (Annexure-1) passed by the Deputy General Manager (P) (the appellate authority) is quashed. The matter is remanded back to the appellate authority for passing an order afresh on the memo of appeal preferred by Mr. Naqvi, on the question of quantum of punishment. I direct the appellate authority to substitute the punishment of removal from service imposed upon Mr. Naqvi by any other suitable punishment, which does not have the effect of forfeiture of the pensionary benefits which he would have been entitled to, including punishment of

compulsory retirement. Such order must be passed by the appellate authority within a period of two months from the date of receipt/production of a copy of this order. Petitioner's entitlement for pensionary benefits will be dependent upon the nature of order to be passed by the appellate authority, in terms of the present order.

23. This application is, accordingly, allowed with the observation as above.

24. There shall be no order as to costs.

**(Chakradhari Sharan Singh, J)**

ArunKumar/-

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