IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4370 of 2015

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Radhe Shyam Pandey, aged about 61 years, Son of Late Dinesh Pandey Resident of Village - Jamapur, P.O. & P.S. Ziradai, District Siwan.

.... Petitioner

Versus

1. Bank of India, through it's Zonal Manager, Zonal Office at Muzaffarpur.
2. D.G.M.-cum-Zonal Manager, Bank of India, Muzaffarpur Zone, Muzaffarpur, Bihar.
3. Assistant General Manager-cum-Disciplinary Authority, Bank of India, Muzaffarpur Zone, Muzaffarpur (Bihar).
4. Chief Inquiring Officer, Bank of India, Vigilance Cell, N.B.G., Howrah.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sharma, Advocate.

For the Respondent/s : Mr. Ajay Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

(Date - 23.03.2015)

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

> *" That the present writ application is being filed for issuance of appropriate writ or writs, in the nature of the writ certiorari quashing (a) the order dated 10.5.2014 (Annexure 9), passed by the Deputy General Manager cum Zonal Manager cum Appellate Authority, Bank of India, Muzaffarpur Zone, Respondent no.2(b) order of punishment contained in Memo No. ZO:MUZ:HRDIR:2013-14:2717 dated 14.12.2013 (Annexure 7) passed by the Assistant General Manager cum Disciplinary Authority, Bank of India, Muzaffarpur Zone, respondent no.3, awarding the consolidated measure penalty of reduction to a lower stage by 4 stages in the time scale of pay i.e. Basic Pay (from Rs.33,000 to Rs.29,700) with further direction that the petitioner will not earn increments of pay during the period of such*

> *reduction and on expiry of such period having effect of postponing the future increment of pay (ii) Mandamus directing and commanding the respondents to pay all the arrears of salary and other allowances to the petitioner as were applicable to the petitioner had the penalty awarded would not have been passed and stay of the operation of the impugned order contained in (Annexure 9 and 7) passed by the appellate and disciplinary authority respectively."*

3. Learned counsel for the petitioner has submitted that the petitioner, who was an employee of Bank of India, was subjected to the order of punishment dated 14.12.2013 and while his appeal against the said order of punishment was still pending before the appellate authority he had retired from service on 31.1.2014. According to him, the appellate order passed after his retirement on 10.5.2014 affirming the order of punishment dated 14.12.2013 is bad both on fact and in law as also is harsh and excessive keeping in view the misconduct allegedly committed by him.

4. Learned counsel for the respondents, on the other hand, has submitted that the misconduct against the petitioner was duly proved and in fact when the petitioner had in course of departmental proceeding himself admitted his guilt and has also prayed for taking a lenient view that the disciplinary authority keeping in view that his retirement was to take place within a couple of months had inflicted the lesser punishment of reduction

to a lower stage by 4 stages in time scale of pay and also not earning increment during the period of such reduction. According to the learned counsel for the Bank, the petitioner having admitted his guilt and also got a lesser punishment cannot be now allowed to question the order of punishment much less the quantum of punishment.

5. This Court has perused the materials on record. The petitioner was facing serious charges as would be evident from the memo of charge dated 30th October, 2013, relevant portion whereof reads as follows:

" ***ARTICLES OF CHARGE***

Acts of misconduct, as hereinafter mentioned, are alleged to have been committed by you during your tenure as Branch Manager of Bank's Kailgarh Branch from June 2009 to May 2012.

ARTICLE-I

You have exceeded your delegated authority and have sanctioned various credit facilities to your close relatives/ close relatives of staff members and staff member, in gross violation of Bank's laid down norms and extant guidelines, as has been elaborated in the statement of allegations.

ARTICLES-II

You, in gross violation of Bank's laid down norms, have sanctioned KCC limit of Rs.25,000/- on 30.5.2011 to Ms. Khushboo Rai, who is minor as per the birth date mentioned in S/B account, tampered/ modified the birth date of system without obtaining any age proof before making such changes, inasmuch as---

i) The said loan was sanctioned to her, when her mother (Smt. Koresa Devi) was enjoying KCC loan facility since 19.6.2010 and no repayment was forthcoming from the inception of the loan account. Account is rescheduled on 28.8.2012.

ii) You sanctioned another KCC loan of Rs.25,000/- to Sri

Bulbul Rai, brother of said Ms. Khushboo Rai, on the basis of same land possession certificate, for which the loan was sanctioned to Smt. Koresa Devi. Account is rescheduled on 26.12.2012.

ARTICLE-III

You have extended undue accommodation to one Sri Ranjit Sah by sanctioning four different credit facilities to him within the period from 28.12.2010 to 12.5.2012, as narrated in the Statement of Allegations, in gross violation of Bank's laid down norms and without ensuring proper end use of funds. As a result, no assets were created, for which loans were sanctioned by you causing financial loss to the Bank.

ARTICLE-IV

You, in gross violation of Bank's laid down norms, have sanctioned TOD of Rs.50,000/- on 14.3.2012 and another TOD of Rs.29.500/- on 7.3.2012 in S/B Account No. 445210100010180 and 4452105110002889 respectively. Both the accounts have become NPA, causing financial loss to the Bank, as narrated in the Statement of Allegations.

ARTICLE-V

You have failed to act diligently, inasmuch as you have sanctioned C/C limit of Rs.3.60 lakhs and term loan of Rs.5.40 lakhs to one Mr. Munna Singh, for furniture manufacturing unit and have neither covered the same under CGTSME cover nor obtained third party guarantee. The account is classified as NPA exposing the Bank to financial loss, as narrated in the Statement of Allegations.

ARTICLE-VI

You have misused your official position while sanctioning a term loan of Rs.3.00 lakhs to Shri Nawajish Hussain on 22.11.2010 and another term loan of Rs.3.20 lakhs to Shri Om Prakash Pathak (brother of your son-in-law) on 6.8.2011 for purchase of car, without obtaining income proof of the borrowers, inasmuch as the account of Shri Nawajish Hussain is out of order and the account of Shri Om Prakash Pathak, has been classified as NPA, causing financial loss to the Bank.

In the aforesaid manner, you have failed to discharge your duties with utmost devotion and diligence and have also failed to ensure and protect the interests of the Bank, which, if proved, would amount to breach of Regulation 3(1) of the Bank of India Officer

Employees' (Conduct) Regulations, 1976."

6. In respect of the aforementioned charges, a departmental enquiry was conducted against the petitioner and the enquiry officer had recorded that the petitioner had admitted all the charges unconditionally and voluntarily even before the presentation made by presenting officer. As a matter of fact, the petitioner also did not take assistance of any defence representative. Under the aforesaid circumstances, the enquiry officer in his report had recorded as follows:

> *"ANALYSIS OF EVIDENCE/WITNESSES IN SUPPORT/ DEFENCE OF CHARGES FINDINGS OF I.A.:*
>
> *The CSO accepted all the charges mentioned in Articles of Charge bearing Ref. No. ZO:MUZ:HR:IR:2013-14:2383 dated 30.01.2013 unconditionally and voluntarily without any fear and coercion from any side. He also accepted all the Management documents listed in the aforesaid Article of Charge.*
>
> *CONCLUSION:*
>
> *Since, the CSO admitted all the charges unconditionally and voluntarily, the charges brought against the CSO are corroborated by the documents submitted by the P.O. Hence all the charges under Article of Charges-I to VI is proved.*
>
> *(Shaibal Karmkar)*
> *(Inquiring Authority)*
>
> *To*
> *The Assistant General Manger &*
> *Disciplinary Authority, Muzaffarpur Zone.*

7. Upon receipt of the aforementioned enquiry report, the disciplinary authority, by his order dated 18.11.2013, had given a copy of the enquiry report to the petitioner and has asked him to

submit his comments/reaction to the enquiry. The petitioner, in reply to the aforesaid notice of the disciplinary authority, had accepted the fact that he had admitted all the charges but then a lenient view should be taken. To that extent, it would be required to quote the petitioner's reply. Relevant proton thereof reads as follows:

> *"To*
> *The Disciplinary Authority*
> *Bank of India*
> *Muzaffarpur Zone*
> *Sir,*
>
> *With reference to the disciplinary proceedings for Kailgarh Branch, I would like to submit that, although I have accepted all the charges levelled in Articles of Charge bearing Ref. No. ZO:MUZ:HR:IR:2013-14:2383 dated 30.10.2013 during inquiry proceedings, I wish to furnish the following details and pray before you that:*
>
> *i) I have put 39 years of unblemished service in the Bank.*
> *ii) Some of the error made by me due to ignorance of rules & procedures of the Bank.*
> *iii) Pressure for government sponsored loans and priority sector lending was enormous due to which some mistakes of omission and commission took place.*
> *iv) I have mobilized premium amounting to Rs. 74.0 lac during the year 2010-11 for which I was awarded with certificate by the Zonal Manager.*
> *v) I was awarded for opening highest number of No. Frill Account in the Zone.*
>
> *……………………………………………………………………………..*
> *……………………………………………………………………………..*
>
> *In the light of the above, I request your goodself for treating my case leniently and sympathetically.*
>
> *Yours faithfully*

Radhey Shyam Pandey
Staff-Officer, MM-III
R.F. No. 115815
Credit Process Centre,
Burdwan.

8. Upon receipt of the aforementioned representation of the petitioner, the order of punishment was passed, relevant portion whereof reads as follows:

"05. In the light of representation of the CSO on Interlocutory Application's finding, the undersigned has carefully perused the Articles of Charge along with statement of allegations, written statement of defence of the CSO, Inquiry proceedings including the oral and documentary evidences produced in the inquiry and the inquiry report. The undersigned is satisfied that the inquiry has been conducted strictly in accordance with the provisions contained in the Bank of India Officer Employees' (Discipline and Appeal Regulations), 1976. The CSO had participated in the inquiry and reasonable opportunity was given to the CSO at all stages of the inquiry. Now the undersigned proceeds to examine the contentions of he CSO mentioned in Para 4 and records his observations article wise as under:-

ARTICLE -I

-The CSO has sanctioned loan to M/s Adity Enterprise suppressing the fact that the proprietor of the unit is his son-in-law, i.e. husband of his daughter Mrs. Manisha Pathak. The business is not in existence. The present balance outstanding of the loan account is Rs. 5,64,658=00 . The contention of the CSO that the present balance outstanding is within the sanction limit is irrelevant so far as the allegation is concerned.

- The CSO has sanctioned loan to Mr. Omprakash Pathak suppressing the fact that Sri Pathak is the brother of his son-in-law of his daughter Mr. Manisha Pathak. The submission of the CSO that the account is regular is wrong as the A/c is NPA as on date and the present balance outstanding is Rs. 2,14,645=00.

-The CSO has sanctioned two Auto-fin loans to staff members viz.

Mr. K.K.Rawat and to Mr. J.P.Srivastava which are beyond his delegation. The contention of the CSO that the accounts are regular is irrelevant as regards the allegation is concerned.

ARTICLE -II

-The CSO has sanctioned a KCC loan Ms Khusboo Rai who was engaged as a casual labour in the branch, overlooking the fact that she was a minor and when there was a loan outstanding in the name of her mother Mrs. Koresa Devi which was grossly out of order. Moreover, to suppress the irregularity, the CSO had consciously changed the date of birth of Ms. Khusboo in the system showing her as "Major". He has also sanctioned a KCC loan to Mr. Bulbul Rai, the brother of Ms Khusboo. Both the KCC loans in the name of mother & brother of Ms. Khusboo are restructured. The contention of the CSO that KCC loan A/c of Ms Khusboo has been closed does not minimize the gravity of the irregularity as after availing the loan facility, Ms Khusboo has joined the bank as a Safai Karamchari and as an employee, she had no other alternative but to close the grossly irregular KCC loan a/c.

ARTICLE -III

-The CSO has sanctioned 4 loan and Cash Credit facilities to Sri Ranjit Sah. The submission of the CSO that the accounts are standard is wrong as all these accounts are classified as NPA as on 30.09.2013. Moreover, the assets created out of bank finance/charged assets are not in existence & the present balance outstanding to the tune of Rs. 14.80 lacs in these accounts are likely loss to the Bank.

ARTICLE -IV

-The CSO has allowed TODs in State of Bihar a/cs of Mr. Sandeep Kumar and of Ms Kismati Devi, TOD granted to Mr. Sandeep Kumar is still outstanding and has become NPA with present balance outstanding of Rs. 52213/- which is likely loss to Bank.

ARTICLE -V

-The CSO did not obtain CGTMSE coverage in SME loan/CC A/Cs sanctioned by him to Mr. Munna Singh under PMEGP scheme. The loan a/c is shown as regular due to appropriation of subsidy in the a/c. This A/c was classified as NPA on 31.12.2012

& subsequently upgraded. There is hardly any turn over in the Cash Credit A/c.

ARTICLE -VI

-The CSO had sanctioned Autofin loans to Sri O.P. Pathak & Sri N.Husain without obtaining income proof required for calculation of their eligibility under the scheme. Both the A/cs have turned to NPA though the A/c N.Hussain has been closed recently, i.e. on 30.12.2013. There is a likely loss of Rs. 2.15 lacs to the Bank in the A/c of Sri O.P. Pathak.

It is further observed that the other contentions of the CSO, viz, he has put in 39 years of unblemished service in the Bank, some of the error made by him are due to ignorance of rules and procedures of the Bank, pressure for government sponsored loans and Priority Sector Lending was enormous due to which some mistakes of omission and commission took place, he has mobilized premium amounting to Rs. 74.00 lac during the year 2010-11 for which he was awarded with certificate by the Zonal Manager & he was awarded for opening highest number of No Frill Accounts in the Zone, are not acceptable as they are self contradictory and irrelevant so far chares levelled against him are concerned.

05. Taking into account the above mentioned observations, the undersigned does not find merit in the submissions made by the CSO. Hence, the same are rejected and the inquiry report is accepted in toto.

06. The charges found proved against the CSO are quite grave in nature. The CSO is found to have grossly violated norms and procedures of the Bank. He has acted whimsically/acted at his own free will, resorted to reckless finance, exceeded the delegated powers and failed to protect the interest of the Bank. His actions have put substantial amount of Bank's fund at risk & there is likely to be huge loss to the Bank as a few A/cs with substantial balance outstanding are already classified as NPA.

07. Considering the entire records of the case, the undersigned is convinced that imposition of the major penalty of "Reduction to a lower stage by 4 stages in time scale of pay, upto and inclusive the date of his superannuation, i.e. 31.04.2014 with further directions that the officer will not earn increments of pay *during such reduction and on expiry of such period the reduction will have the effect of postponing future increments of pay", in terms of regulations 4(f) of Bank of India Officer Employees' (Discipline & Appeal) Regulations 1976 upon the CSO will meet ends of justice. Accordingly, following order is passed.*

ORDER

SHRI RADHEY SHYAM PANDEY, STAFF OFFICER, SENIOR MANAGER, BE AND IS HEREBY AWARDED THE CONSOLIDATED MAJOR PENALTY OF "REDUCTION TO A LOWER STAGE BY 4 STAGES IN THE TIME SCALE OF PAY, i.e. BASIC PAY OF SHRI PANDEY STANDS REDUCED FROM Rs. 33,300/- to Rs. 29,700/- UPTO & INCLUSIVE OF THE DATE OF HIS SUPERANNUATION, i.e. 31.01.2014 WITH FURTHER DIRECTIONS THAT THE OFFICER WILL NOT EARN INCREMENTS OF PAY DURING THE PERIOD OF SUCH REDUCTION AND ON EXPIRY OF SUCH PERIOD, THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING THE FUTURE INCREMENTS OF HIS PAY" IN TERMS OF REGULATIONS 4(F) OF THE BANK OF INDIA OFFICER EMPLOYEES' (DISCIPLINE & APPEAL) REGULATIONS, 1976 FOR THE ACTS OF MISCONDUCT ALLEGED AGAINST HIM IN ARTICLES OF CHARGE BEARING NO. ZO/MUZ/HR/IR/2013-14/2383 dated 30.10.2013 AND HELD AS PROVED IN THE DEPARTMENTAL INQUIRY.

This order shall take immediate effect.

9. Let it be noted that such an order of disciplinary authority dated 14.12.2013 was capable of being made subject matter of appeal within next 45 days but the petitioner did not file such appeal and in the mean time, he had retired from service on 31.01.2014. It is only after his retirement that the petitioner had filed an appeal on 05.02.2014 beyond the period of limitation of 45 days and his plea was that though he had admitted the charges

framed against him inasmuch as there were few cases of exceeding delegation of power by him but the bank had not suffered any financial loss because the credit facilities were granted to either the bank's permanent staff or his close relatives as against him adequate guarantees were available. Having said so, the petitioner in his memo of appeal dated 05.02.2014, he had stated as follows:-

> *"Sir, on the verge of my retirement this penalty order had created enormous mental anxiety over me and I had no alternative than to agree with the proposal of the Zonal Official to undertake not to submit any appeal against my penalty order.*
>
> *Now, I have realize that Bank ahs served penalty which seems disproportionate with the misconduct alleged to have been submitted by me, so I request you to be kind enough to take up my appeal for consideration of the following grounds:*
>
> *a) That, Bank has incurred no financial loss out of the said accounts.*
>
> *b) No malafide intention has been proved against me.*
>
> *c) Unblemished service to the Bank for last 39 years.*
>
> *d) Honest and sincere service rendered by me all along my service period.*
>
> *Expecting your favourable consideration.*
>
> *Thanking you*
> *Yours Faithfully*
> *(RADHESHYAM PANDEY)*
>
> *Dated : 5 Feb. 2014*
> *Place: Muzaffarpur*

10. The appellate authority once again had gone into the aspect and he too had found the charges against the petitioner not only to have been proved but also grave and serious in nature. The

relevant portion of the order of the appellate authority in this regard reads as follows:

> *"03. The undersigned in exercise of the powers of the Appellate Authority has carefully gone through the records pertaining to the disciplinary action concluded against Sri Pandey vis-à-vis the contentions and the submission put forth by him in this appeal and finds that the contentions raised by Shri Pandey are irrelevant as regards the charges levelled against him are concerned & as such those are not acceptable. The observations of the undersigned on the contentions of Shri Pandey vis-à-vis records of the departmental proceedings against him are as under:*
>
> *During the preliminary hearing itself, Shri Pandey has accepted all the charges voluntarily & unconditionally. Therefore, the Inquiring Authority did not rightly find it necessary to proceed further with the inquiry & accordingly has held all the charges levelled against Shri Pandey as proved. The DA has taken into consideration the entire records of the case & has applied his mind properly while awarding the Penalty to Shri Pandey. It is observed that Shri Pandey has sanctioned loan to M/s Adity Enterprise suppressing the fact that the proprietor of the unit is his son-in-law. The activity is not in existence. He has sanctioned loan to Mr. Omprakash pathak suppressing the fact that Sri Pathak is the brother of his son-in-law. The A/c is NPA as on date. He has sanctioned two Auto-fin loans to staff members viz Mr. K.K.Rawat and to Mr. J.P. Srivastava which are beyond his delegation.*
>
> *Shri Pandey has sanctioned a KCC loan to Ms Khusboo Rai who was engaged as a casual labour in the branch, overlooking the fact that she was a minor and there was a loan outstanding in the name of Mrs. Koresa Devi, her mother, which was grossly out of order. Moreover, to suppress the irregularity, he had changed the date of birth of Ms Khusboo in the system showing her as "Major". He has also sanctioned a KCC loan to Mr. Bulbul Rai, the brother of Ms Khusboo. Both the KCC loans in the name of mother and brother of Ms Khusboo are restructured. He has sanctioned four loans and Cash Credit facilities to Sri Ranjit Sah. All these accounts are classified as NPA as on 30.09.2013. Moreover, the assets created ouf of Bank's finance are not inexistence. He has allowed TODs in State of Bihar a/cs of Mr. Sandeep Kumar and of Ms. Kismati Devi. TOD granted to Mr. Sandeep Kumar is still outstanding and has become NPA. He did not obtain CGTMSE coverage in SME loan/CC A/C sanctioned by him to Mr. Munna Singh under PMEGP scheme. The loan a/c is shown as regular due to appropriation of subsidy in the a/c. This A/c was classified as NPA on 31.12.2012 & subsequently, upgraded. There is hardly any turn over in the Cash Credit A/c. He had sanctioned Autofin loans to Sri O.P.Pathak & Sri N.Hussain witout obtaiing income proof required for calculation of their eligibility under the scheme. Both the A/Cs became NPA. Subsequently, the A/c of N.Hussain has been closed.*
>
> *The charges levelled and found proved against Shri Pandey are grave and serous in nature. He ahs violated Bank's*

norms and has resorted to reckless fiancé, exceeded his delegated authority and failed to protect the interest of the Bank. There is likely to be huge loss to the Bank in the Accounts involved as a few A/cs with substantial balance outstanding have already been classified as NPA and the other Accounts are grossly out of order.

Therefore, the undersigned does not find any merit in the submissions made by Shri Pandey in his appeal. Hence, the same are rejected.

04. In view of the aforesaid, the undersigned does not find any justification/merit for interfering with the nature of penalty inflicted by the Disciplinary Authority and finds that the penalty inflicted is just, proper and commensurate with the gravity of misconduct proved against Shri Pandey. Accordingly, the instant appeal preferred by Shri Pandey is disposed of as dismissed and the penalty inflicted upon him by the Disciplinary Authority is confirmed.

Sd/-
(R.C.Thakur)
Dy. GENERAL MANAGER
&
APPELLATE AUTHORITY
Muzaffarpur Zone.

11. Learned counsel for the petitioner before this Court also had only pressed two issues while assailing the aforesaid order of disciplinary authority and its affirmance by the appellate authority. According to him, first of all, it was not correct on the part of the disciplinary authority to inflict punishment on the petitioner because the bank had sustained no loss. Secondly, he had urged that the order of punishment was wholly disproportionate.

12. This Court has perused the materials on record. The charges against the petitioner were quite grave and, therefore, the plea that no loss was caused to the bank by itself can never be a ground for interfering with the order of punishment. As a matter of

fact, appellate authority had clearly gone into this aspect and had found that the petitioner had sanctioned four loans and cash credit facilities to one Ranjit Sah. All these accounts were classified by the bank as NPA as on 30.09.2013. The assets allegedly created out of bank's finance were not found in existence. Similarly, the petitioner was found to have allowed over draft in the account of Sandeep Kumar and Kismati Devi and the over draft granted to Sandip Kumar was still outstanding and had become NPA. IN the likewise manner, the account of Munna Singh and O.P. Pathak and N. Hussain had become NPA. This, it is not correct to say that on account of misconduct committed by the petitioner either by way of exceeding his power or even making interpolation in the record for justifying his illegal actions, no loss was caused to the bank. The appellate authority, in fact, had held that there was likely to be huge loss to the bank as a few A/cs with substantial balance outstanding are already classified as NPA and other accounts were also grossly out of order.

13. In presence of such finding, this Court will be wholly reluctant to hold that no financial loss was caused to the bank on account of misconduct committed by the petitioner.

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. Having regard to the fact that the petitioner in this writ application has assailed an order of punishment and its affirmance by the appellate authority by forgetting that he had not only admitted the guilt in course of departmental proceeding but had also pleaded for mercy before the disciplinary authority, whereafter the petitioner was not given the maximum punishment of dismissal from service only keeping in view of his impending retirement, today the petitioner cannot be allowed now to turn around and make any grievance against the order which was passed only on account of compassion shown to him. In any event this Court does not find any error in the order of the disciplinary authority and the appellate authority especially when the petitioner has himself gone to admit the charge.

21. In any event that would be hardly a scope for judicial review in the matter arising out of disciplinary proceeding inasmuch as this Court cannot sit in appeal over the decision taken by the disciplinary authority and the appellate authority. Reference in this connection may be made to the judgment of the Apex Court in the case of ***B.C.Chaturvedi v. Union of India & ors.,*** reported

in ***(1995)6 SCC 749***.

22. That being so, this application must fail and is accordingly dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 23rd March 2015
A.F.R./ surendra/sujit-

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