IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5243 of 2000

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Badri Nath Choudhary, son of late Dukh Mochan Choudhary, resident of Chainpura, P.S. Benipatti, District Madhubani

.... Petitioner

Versus

1. The Punjab National Bank through the General Manager, Punjab National Bank, Personnel Section Bhikha Ji Kama Place, New Delhi
2. The General Manager, Punjab Naitonal Bank, Personnel Section, Bhikah Ji Kaka Place, New Delhi
3. The Zonal Manager, Punjab National Bank, R Block, Patna

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Ranjan Kumar Jha
For the Respondent/s : Mr. Sunil Kumar Singh I
Mr. Sunil Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 06-08-2015 Heard learned counsel for the parties.

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

> " That this writ application is being filed for quashing the orders, as contained in Annexures 4 and 7 to the writ application with a prayer to give the petitioner all legal and consequential benefits following from quashing of the aforesaid orders."

3. Mr. Ranjan Kumar Jha, learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that both the orders of punishment against the petitioner cannot be sustained because the disciplinary authority as well as appellate authority did not take into account the fact that the petitioner was

overloaded with the work and, therefore, it was must for him to follow the rigorous procedure prescribed by the Bank for granting loan to the loanee. To that extent, he had also tried to draw some sort of support from the findings of the enquiry officer in the enquiry report. He has next contended that in any event, even if the order of punishment inflicted by the disciplinary authority can be said to be commensurate to the misconduct committed by the petitioner, the enhanced order of punishment by the disciplinary authority cannot be justified specially when he has not only travelled beyond the records of departmental proceeding but has also exceeded the powers under Rule 17 of the Regulation of the Bank which only confers him power to enhance punishment in course of consideration of an appeal on the basis of materials on record and not something which was known to him otherwise.

4. Mr. Jha in this regard explains that his past serve record including two orders of punishment was never made subject matter of charge nor the enquiry officer had given any findings thereon nor even the disciplinary authority had looked into the same for inflicting order of punishment. The appellate authority, while examining the appeal filed by the petitioner, on his own, having access to the personal file of the petitioner, could find out that there were two earlier orders of punishment against

the petitioner and that is why he had sought a show-cause reply from the petitioner for enhancement of the punishment and, thereafter, has passed an order even without considering the reply of the petitioner as with regard to those earlier orders of punishment.

5. Learned counsel for the Bank, on the other hand, has submitted that once it is an admitted fact that the petitioner was subjected to two earlier orders of punishment, he cannot be said to have been prejudiced in any manner by a show-cause notice given by the appellate authority for enhancing the punishment or the resultant order of the appellate authority, whereby and whereunder, the petitioner has been compulsorily retired in place of an earlier order of punishment inflicted by the disciplinary authority. In fact, learned counsel for the Bank has drawn support from the same Regulation 17 that the appellate authority very well drawn and, that is why, such an power in fact has been given to the appellate authority for enhancing the punishment beyond one which was inflicted in the disciplinary proceeding by the disciplinary authority.

6. In the considered opinion of this Court, there would be no difficulty in holding that there was no procedural infirmity in the disciplinary proceeding and that the order of

punishment inflicted by the disciplinary authority does not suffer from any error wherein the petitioner was inflicted the order of punishment by way of reduction of salary by five stages (increments) in the time scale of pay in which he was placed on 18.3.1999 for a period up to 31.12.2006 (i.e. his normal date of superannuation) with cumulative effect, with further direction that he will not be earning increment of pay during period of such reduction and the reduction will have the effect of postponing the future increments of his pay.

7. In this regard this Court will first take into account the charges that were framed against the petitioner in the departmental proceeding:

" PUNJAB NATIONAL BANK

DISCIPLINARY ACTION CELL

ZONAL OFFICE, PATNA

STATEMENT OF ARTICLES OF CHARGES, AGAINST SHRI B.N.CHOUDHARY.

OFFICER IN CHARGE AT BO: BHAIROPATTI PREVIOUSLY AT BO: GARAUL.

…………………..

While working as DIC at BO: Geraul from 29.9.1991 to 25.2.1995, Shri B.N.Choudhary is alleged to have committed the following lapses/ irregularities jeopardizing bank's interest:-

ARTICLE- I

Shri B.N.Choudhary failed to exercise control over functioning of the branch, he absented from the office and kept the office closed unauthorizedly and also ignored the balancing of the books of the branch.

ARTICLE-II

He failed to obtain BC letters in borrowal accounts and allowed limitation to expire therein putting bank's interest in jeopardy.

ARTICLE-III

While sanctioning and disbursing loans Shri B.N.Choudhary ignored bank's prescribed norms and established pratice of pre sanction appraisal, documentation and security creation and allowed misutilisation of loan and subsidy.

Thus said Shri B.N.Choudhary failed to discharge his duties with diligence and devotion to protect interest of the bank and committed misconduct I terms of Regulation 3(1) read with Regulation 24 of the Pubjab Naitonal Bank Officer Employees (Conduct) Regulation, 1977.

Sd/- Illegible
9.12.1996
Zonal Manager/ Disciplinary authority
Bihar Zone, Patna

ANNEXURE –II

PUNJAB NATIONAL BANK
DISCILINARY ACTION CELL
ZONAL OFFICE, PATNA

STATEMENT OF IMPUTATION OF LAPSES/ IRREGULARITIES IN SUPPORT OF ARTICLES OF CHARGES, AGAINST SHRI B.N. CHOUDHARY, OFFICER INCHARGE AT BO: BHAIROPATTI PREVIOUSLY AT BO: GORAUL.

While working as OIC at BO: Garaul from 29.9.1991 to 25.2.1995, Shri B.N.Choudhary is alleged to have committed the following lapses/ irregularities jeopardizing bank's interest:-

CHARGE-I

Being overall incharge of the branch, Sri B.N.Choudhary was required to exercise full control over functioning of the branch and to protest bank's interest. However, he failed to do so as evident from:

(i) He ignored the balancing of the books of the branch as a result of which during Inspection of the branch on 23.12.1994, almost all balances were found in arrear and it was also observed that some of the balances were not even casted.

(2) Shri B.N.Choudhary deputed his cashier incharge for remitteance and left the office by keeping the branch on the following dates:

DATE	REMARKS
16.10.93	Deputed his Cashier to BO: Madhubani for bringing Cash and himself left the office for Saharsa and kept the branch closed.
14.02.94	Deputed his Cashier to BO: Jhanjharpur for brining cash and himself left and office for BO: Saharsa and kept the branch closed.
18.04.94	Shri B.N.Choudhary was alone in the branch, as the cashier incharge was on leave. However, Sri B.N.Choudhary left the branch for BO: Jhanjharpur for bringing cash and kept the office closed.

(His absence from the branch on bank's duty on filmsy ground on the above mentioned dates is corroborated from the fact that no TA bill was claimed by Shri Choudhary which further supports that it was done so to conceal his absence from higher authorities)

20.12.93	Deputed his Cashier to BO: Jhanjharpur for remittance and himself proceeded on leave (unauthorizedly without getting his leave sanctioned)

CHARGE-II

As per norms of the bank being overall incharge of the branch Shri B.N.Choudhary was required to keep limitation alive in all borrowal accounts by obtaining BC letters from the borrowers/ guarantors at periodical intervals. However, he failed to obtain BC letters in below given borrowal accounts and allowed limitation to expire therein putting bank's interest in jeopardy.

Sl. NO.	PRONOTE NO.	NAME OF BORROWER (S/SHRI)	DATE OF DAVANCE	BALANCE O/S(RS.)	LIMITA- TIO EXPI

					RED ON.
01.	02/90	HAKIMUDDIN	12.02.90	6925/-	11.02.95
02.	07/90	BALESHWAR PASWAN	14.02.90	5059/-	13.02.95
03.	09/90	J.PASWAN	14.02.90	5178/-	13.02.95
04.	10/90	PHALIA PASWAN	14.02.90	4668/-	13.02.95
05.	05/92	SAMULAL	04.01.92	11449/-	03.01.95
06.	25/90	GAYASUDDIN	14.02.90	7184/-	13.02.95

CHARGE-III

While sanctioning and disbursing loans Shri B.N.Choudhary ignored bank's prescribed norms and established practice of pre-sanction appraisal, documentation and security creation and allowed misutilization of loan and subsidy, and evident from facts detailed below:-

1. He sanctioned and disbursed a large number of loans in reckless manner (e.g. more than 21 loans on 7.8.93, more than 30 loans on 13.9.93, more than 67 loans on 6.11.93 and more than 60 loans on 24.11.93 etc) Loan documents are blank or parity filled in. In cases of illiterate borrowers, thumb impression of borrower has not been verified by him. These documents were not entered in branch's loan documents cum BC register and the limit sanction register. Most of PNB 639, loan agreements, have not been singed by Shri B.N.Choudhary on behalf of the Bank.

TO QUOTE (LIST IS JUST ILLUSTRATIVE NOT EXHAUSTIVE)

SL. NO.	NAME OF BORROWER S/SHRI	PRONOTE LF/NO	DATE OF ADVANCE	LIMIT (Rs.)	BALANCE O/S (Rs.)
1.	JAIRAM CHOUDHARY	454/93	13.9.93	4000/-	4962/-
2.	BINDESHWAR PASWAN	453/93	DO	3000/-	3841/-
3.	MOTI SADA	439/93	DO	3000/-	3282/-
4.	CHIMLI SADA	441/93	Do	3000/-	3626/-
5.	RATI LAL SADA	440/93	Do	3000/-	3626/-
6.	SHEKH USMAN	24/93	7.8.93	4000/-	5008/-
7.	MEENA DEVI	33/93	Do	4000/-	5008/-
8.	HASINA KHATOON	445/93	Do	4000/-	5018/-

9.	ASHARFI KHATBE	9/93	Do	4000/-	5018/-
10.	PANCHU PASWAN	11/92	Do	3000/-	3878/-
11.	PAVITRA SADAI	19/12	21.1.95	3000/-	3209/-
12.	BUCHHU SAH	21/12	Do	4000/-	4374/-
13.	MD. SHSMIM	160/05	30.1.95	3000/-	3000/-
14.	MD. TAJMUL	167/05	1.2.95	3000/-	3000/-
15.	MD. FARID	168/05	Do	3000/-	3000/-
16.	RAJMAIN DEVI	379/93	24.11.93	3000/-	3745/-
17.	MAHADEO SAH	382/93	Do	4000/-	4935/-
18.	SMT. GULAB DEVI	380/93	Do	4000/-	4935/-
19.	DINESH MUKHIA	395/93	Do	4000/-	4935/-
20.	PANNO DEVI	397/93	Do	4000/-	4935/-
21.	CHOUDHARY PASWAN	295/93	6.11.93	2400/-	3148/-
22.	AMIRUDDIN	294/93	Do	4000/-	4978/-
23.	HARERAM PASWAN	293/93	Do	3000/-	3574/-
24.	DILIP KR. SAH	292/93	Do	4000/-	4978/-
25.	GITA DEVI	341/93	Do	4000/-	4978/-

(In A/Cs at Sl. No. 11, 12 Loan agreement has not been executed even and in a/c at Sl.No. 13, the consideration voucher has not been signed by Shri B.N.Choudhary)

2. In a number DRI laon cases, limit has been sanctioned by Shri Choudhary without obtaining proper loan application:-

TO QUOTE

SL. NO.	NAME OF BORROWER S/Shri	RONOTE LF/NO.	DATE OF ADVANCE	LIMIT (RS.)	BALANCE O/S (RS.)
01	SATYA NR.PASWAN	399/93	24.11.93	3000/-	3745/-
02	BALGOVIND PASWAN	446/93	24.11.93	3000/-	3855/-
03	SUKMARIA DEVI	I.F.65/12	1.2.95	6000/-	6041/-
04	MEGHU SADA	I.F.66/12	1.2.95	6000/-	6041/-
05	JANKI DEVI	I.F.68/12	1.2.95	6000/-	6041/-
06	MASOMAT VATOLAN	I.F.69/12	1.2.95	6000/-	6041/-
07	JUREDA KHATOON	I.F.64/12	1.2.95	6000/-	6041/-
08	BALKISHUN SADA	I.F.63/12	1.2.95	6000/-	6041/-
09	PALIYA DEVI	I.F.62/12	1.2.95	6000/-	6041/-

10 SAVITRI DEVI I.F.67/12 1.2.95 6000/- 6041/-

2. Loan documents do not contain any proof to show that pre-sanction appraisal to assess suitability of borrower or viability of the trade being financed, was ever conducted by Shri B.N.Chaudhary. In fact he is violation of Annual Credit Plan, disbursed loans mostly for trades where security was easily convertible into cash (kiranna/ grossery goods etc.) to avoid detection of non supply of security.

3. End use of the loans disbursed have not been verified by Shri B.N.Choudhary in most of the cases. The securities have been found missing in almost all the cases, during regular inspection of the branch.

4. In certain cases, he disbursed loan through suppliers who were actually not doing any trading in the commodities for which the loan proceeds and subsidy was paid to them. Bills on plain paper obtained from these persons are kept with loan documents to complete bank's records. There is nothing to prove receipt of securities by the borrowers.

5. He disbursed TL to Shri Balgovind Paswan and Shri satyanarayan Paswan by issuing cash order o 438/93 and 439/93 dated 24.11.93 for Rs.6000/- each in favour of Shri Kaushal Kumar Keshari Shri K.K.Keshri has denied of having supplied any thing in anyone or having issued any bill. The cash order has been paid by Shri B.N.Choudhary in cash at the introduction of Shri Ram Prasad Ranshan even though Shri K.K.Keshri is having SF a/c 708 with the branch. Shri K.K.Keshri has denied of having received any payment from the branch and borrowers have also denied of having receited apply of goods. Thus said Shri B.N.Choudhary failed to discharge his duties with diligence and devotion to protect interest of the bank and committed misconduct in terms of Regulation 3(1) read with Regulation 24 of the Punjab National Bank Officer Employees (conduct) Regulation, 1977."

8. The petitioner on receiving the aforementioned memo of charge dated 9.12.1996 had submitted his written statement of

defence denying the charges through his Defending Officer dated 22.11.1998. It is not in doubt that the petitioner as well as the Bank was given the opportunity of leading its evidence by the Enquiry Officer and in fact nothing has been alleged against the writ application with regard to any procedural infirmity in course of enquiry. The Enquiry Officer in fact thereafter had analyzed each of the charge and had found those charges to be proved as would be evident from reading of the findings of the Enquiry Officer which reads as follows:

> "Analysis of Charge-1(i)
>
> Even though all the balances except T/L are now tallied as reported by MW-1 in his oral deposition (EPR-65, O-6), it is established that the balances were pending during the incumbency of C.O. Even the common difference is balancing of T/L was created due to pending of balancing during the tenure of C.O. As such, charge is proved.
>
> Analysis of Charge- 1(ii)
>
> On perusal of ME-45(17), 45(13), 45(11) and 45(15), it is observed that no entries are entered in ME-45, which is voucher Register, for the dates 15.10.93, 14.2.94, 18.4.94 and 20.12.93. This reflects that no transactions were made on these dates which were working days. These are possible only when the branch is closed for transaction C.O. neither in his brief nor in the defence- documents supplied by him could establish the justification for his proceeding on leave/ field visit on the dates on which the

cashier in charge was out of station for brining remittance. If at all the need was so urgent, he could have made some alternate arrangements from ear by branch as/ main branch of the district or from D.C.O. office so astoencure that the working of the branch was not jeopardized. As regards brining of cah on 18.4.94 by the C.O. himself, as mentioned in the charge sheet, he could have taken up the matter with near by branches/ Main branch/ DCO office or RMO office for making arrangements either for remittance or for deputation of staffs. C.O. has not substantiated whether these steps were taken by him or not. As such, charge stands proved.

Therefore, charge-1 stands proved.

Analysis of Charge-II

P.O. has neither produced any documents/ witness nor discussed the articles and imputation of charges in his brief. Contrary to that C.O. has produced a document DE-17 which shows that the B.C. letters were handed over t the successor of the C.O. charge is not proved.

Analysis of Charge III(1)

Keeping in view the working strength of the branch, it is humanly not possible to complete all the formalities before sanction and disbursement of loan when the number of loans sanctioned and disbursed are more than 20 in a single day. As per MF, 43(1&2). The C.O. sanctioned and disbursed more than 20 loans per day 21 times. He even disbursed and sanctioned even 146 on 29.10.93, 160 on 6.11.93 and 105 on 24.11.98. This shows that the C.O. was in regular habit of sanctioning and disbursing huge quantum of loan proposals in a single day. This will definitely result in occurrence/recurrence of many lapses such as presanction appraisal keeping loan documents blank or lapses in documentations. The reasonings forwarded by the C.O. for these lapses are bad law and order position in the area and heavy rush of work. But in both the cases, he would have referred the matter in RMO/DCO and could have taken their help. But this was not done. As regards the point of keeping IRDP applications pending for not more than 14 days, as raised by him in his reply to charge sheet in ED 2(2), he could have sought additional support from RMO. As such, the charge is proved.

Analysis of Charge III(2)

Charged officer has not discussed this charge in the brief submitted by him. He has also not submitted any document/ witness to substantiate whether loan application PNB 808 was obtained or not. On the inquiry he has accepted the charge in his reply dated 20.9.97 ED 2(2). As such, the charge is proved.

Analysis of Charge III(2)A

Sanction and disbursement of 995 loans under the head SB/RT for kirana good and Grosery Home in a small place like Garaul, where one can hardly find not more than 1 or 2 tea stalls (Refer deposition by Mw-6 in EPR-68 Def Asstt Q-3) shows that financial viability was not taken care of at the time of sanction of loan. This is possible only when there is poor fautly pre-sanction appraisal or there was not appraisal at all. Otherwise, the

C.O. would have taken care of financial viability and could not have sanctioned 995 trading loan during his tenure. Sponsoring of DRDP application by the Block officials does not compet a banker either to leave aside the appraisal part or to sanction the loan C.O. could have very safely returned these applications to Block as there were locking financial viability. The charge is proved.

Analysis of ChargeIII(3)

Charged officer has not produced even a single document which could show that end use of the fund was verified by the Bank official. Issue of verification of End-use of fund has not even been discussed in his brief. As such, the charge is provided on the basis of management documents witness produced by the P.O.

Analysis of Charge III(4)

The C.O. has not covered in his brief that when Sh, Suresh Pd. Choudhary is such a big farmer that he could supply agricultural produce over Rs. one lac to more thn 20 borrowers. How would he be eligible for a SEEUY loan in 1994 i.e. after working as supplier. Similar is the case with Diwakar Sah who is a washer man. As rightly pointed out by MW-6 in his deposition at EPR-68 that when Garual is such a small place that one cannot even locate a tea stall, existence of General order supplier could not be even dreamed off. This shows that goods were supplied for diversion of Bank’s fund. Charge is proved.

Analysis of Charge III(5)

This has been established in the enquiry during deposition of MW-5 that St. Kaushal Kumar Keshri is maintaining a saving fund account and ha snot acted as supplier. There is no other Kaushal Kumar Keshri in the village and he had not received the payment of cash orders. Further MW-1 has confirmed that the signature of Shri Kaushal Kumar Keshri as given in saving fund specimen slip MF-42(16) does not tally with signature of Shri Kaushal Kumar Keshri on the back side or cash orders i.e. ME 42(14215). This proves that the payment of cash orders was taken by some body also by making forged signature of Shri Kaushal Kumar Keshri. The C.O. did not take precautions. This shows that he acted in negligent manner charge is proved.

The above enquiry report is placed before the disciplinary authority for his decision without any prejudice.

Sd/- Illegible

7.1.99

(A.B.Sinha)

Inquiring authority"

9. Thereafter the petitioner was given further opportunity to file his reaction/ comments to the enquiry report and the disciplinary authority after considering the explanation offered by the petitioner had passed his order dated 18.3.1999 inflicting the order of punishment of reduction of salary by five stages in the time scale of pay in which he was at that point of time placed for the period upto 31.12.2006 i.e. normal date of superannuation with cumulative effect with further direction that he would not earn

increments of pay during the period of such reduction and that the reduction will have effect of postponing the future increments of his pay. The relevant portion of the order of punishment dated 18.3.1999 is quoted hereinbelow:

> "In view of the above, I consider Shri B.N.Choudhary to have committed misconduct as alleged in the charge sheet dated 9.12.1996 and decide to impose upon him a Major penalty of "REDUCTION OF SALARY BY FIVE STAGES (INCREMENTS) IN THE TIME SCALE OF PAY IN WHICH HE IS AT PRESENT PLACED FOR A PERIOD UP TO 31.12.2006 (i.e. HIS NORMAL DATE OF SUPERANNUATION) WITH CUMULATIVE EFFECT WITH FURTHER DIRECTION THAT HE WILL NOT TEARNINCRIMENTS OF PAY DURING THE PEIROD OF SUCH REDUCTION AND THE REDUCTION WILL HAVE EFFECT OF POSTPONING THE FUTURE INCREMENTS OF HIS PAY". Under Regulation 4(f) of Punjab National Bank Officer Employees (D&A) Regulations, 1977.
>
> I order accordingly, Shri B.N.Choudhary be informed."

10. After the petitioner had received the aforementioned order of punishment he had preferred an appeal against the order of punishment and the appellate authority having concurring with the finding of the Enquiry Officer and the disciplinary authority had found that the punishment was not commensurate to the misconduct committed by the petitioner and that the gravity of

charge warranted imposition of major punishment of compulsory retirement. Such order of the appellate authority dated 30th November, 1999 by way of a show cause notice was served on the petitioner which again being very relevant for the purposes of this case is quoted hereinbelow:

> "7. I have gone through the various points raised by Shri Choudhary in his appeal alongwith the records of the case. Charges against Shri Choudhary have been proved on the basis of evidence adduced in the departmental inquiry and I am convinced that due opportunity was given to Shri Choudhary to defend his case at each stage of disciplinary proceedings. There is no merit in the points raised by Shri Choudhary in his appeal.
>
> 8. <u>The charges which have been proved in the departmental enquiry are of serious nature and have brought disrepute to the image of the bank. The records also reveal that Shri Choudhary was placed under suspension on an earlier occasion in the year 1985 and earlier also he was punished with minor penalties on two occasions. As such, I am of the opinion that major penalty of 'Reduction of salary by five stages (increments) in the time scale of pay in which he is at present placed for a period upto 31.12.2006 (i.e. his normal date of superannuation) with cumulative effect, with further direction that he will not earn increments of pay during the period of such reduction and the reduction will have effect of postponing the future increments of his pay imposed upon Shri Choudhary by the Disciplinary</u>

authority does not commensurate with the nature of charge proved in the departmental enquiry. On careful consideration of records of the case, the under singed has come to the conclusion that the gravity of charges warrants imposition of major penalty of 'Compulsory Retirement.'

9. Now, therefore, Shri Choudhary is hereby given an opportunity of making representation on the panelty proposed above. Any representation which he may wish to make against the penalty prepared, will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this notice by Shri Choudhary."

(underlining for emphasis)

11. As would be evident from the underlined portion in paragraph 8 of the show cause notice the appellate authority had taken into consideration that the petitioner on earlier occasion in the year 1985 and even earlier was punished with minor penalties on two occasions. He was of the opinion that the major penalty inflicted on the petitioner by the disciplinary authority was inadequate and that the gravity of charges warranted imposition of major penalty of compulsory retirement. Having thus issued a show cause notice, a show cause reply was filed by the petitioner at the time of hearing on 30.12.1999 wherein he had given the

explanations with regard to enhancement of punishment.

12. Considering the explanation offered by the petitioner the appellate authority by his order dated 20.1.2000 had gone to enhance the punishment which was inflicted by the disciplinary authority to compulsory retirement of the petitioner vide his order dated 20.1.2000 which reads as follows:

> " ORDER
>
> Shri B.N.Choudhary, Officer Incharge, BO: Umagaon previously at BO Garual- Charge sheet dated 9.12.96. Appeal
>
> Shri Choudhary was served with charge sheet dated 9.12.96 for the lapse/ irregularities allegedly committed by him while working as Officer Incharge at BO Garaul. The Disciplinary Authority held him guilty of the charges proved in the departmental enquiry and imposed major penalty of 'Reduction of salary by five stages (inrements) in the time scale of pay in which he is at present placed for a period upto 31.12.2006 (i.e. his normal date of superannuation) with cumulative effect, with further direction that he will not earn increments of pay during the period of such reduction and the reduction will have effect of postponing of future increments of his pay vide order dated 18.3.99.
>
> 2. He preferred an appeal against the aforesaid major penalty imposed by the disciplinary authority. The undersigned, after careful consideration of the records of the case, came to the conclusion that gravity of charges

warranted imposition of major penalty of 'Compulsory Retirement'. He was served with show cause notice dated 30.11.99 to give him an opportunity of making representation on the proposed penalty.

3. Shri Choudhary has submitted his representation vide letter dated 30.12.99 wherein he has mainly raised the following points.

3.1 The observation that the charges proved in the departmental enquiry are of serious nature and he had brought dispute to the image of the bank, does not match with the actual position. He was posted at BO Bhairopatti as incumbent incharge at the time of serving charge sheet and continued there till 11.4.98 in the same capacity. He was again posted as Officer Incharge on transfer to BO Umgaon and continued to work as Incharge after imposition of the penalty under reference. The Bank has always shown confidence in his working by posting him as first man.

3.2 That he was placed under suspension erroneously when Chashier of the branch Madhwapur committed a fraud. His suspension was revoked subsequently and he was imposed a minor penalty. The observation about imposition of two minor penalties is erroneous because he was imposed with only one minor penalty as stated above.

3.3 Further Shri Choudhary has requested to consider his appeal favourably for reduction in the penalty imposed by the Disciplinary Authority.

4. On carefully considering the representation of Shri Choudhary alongwith records of the case, I observe thast

the charge proved against him pertain to ignoring of balancing of books of the branch and for absenting from the office and keeping the office closed unauthorisedly for four days. It has also been proved that he sanctioned and disbursed loans in reckless manner. The lapses/ irregularities committed by Shri Choudhary are serious and there is no merit in the submissions made by him. His submission that he was imposed only one minor penalty, is also not correct. I, therefore, confirm major penalty of 'Compulsory Retirement' instead of the penalty imposed upon shri Choudhary by the Disciplinary Authority.

5. I order accordingly and Shri Choudhary be informed.

Sd/- Illegible
20.1.2000
General Manager
Appellate Authority."

13. Let it be made clear that this Court has no difficulty in approving the order of punishment against the petitioner as was passed by the disciplinary authority and in doing so this Court has not only taken into consideration the gravity of charge that was brought forward by the Bank against the petitioner. This Court is not at all impressed with the submission of Mr. Jha that since the petitioner was very poor in giving loan he had no time to follow the prescribed norms. The issue with regard to misconduct in relation to a Bank Officer committing misconduct in discharging his duty by way of grant of loan without following the prescribed

procedure has been gone into by the Apex Court in a number of cases and therefore, the quantum of punishment, inasmuch as the same relates to the original order of punishment by the disciplinary authority cannot be interfered by this Court. This aspect of the matter has been considered recently by this Court in the case of Radhey Shyam Pandey vs. Bank of India & ors., C.W.J.C.No. 4370 of 2015, disposed of on 23.3.2015 wherein it was held as follows:

> "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 ors. 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."

14. Thus, keeping in view the law on the subject and the admitted fact that those charges were conclusively proved against the petitioner this Court would not find the original order of punishment against the petitioner to be bad on any score.

15. What this Court however finds it difficult to approve

is the enhanced punishment of compulsory retirement. Let it be noted that there is a power vested in the Bank for enhancement of punishment by the appellate authority. The Discipline and Appeal Regulations of the Bank under Regulation 15 lays down as follows:

> "15. PAY, ALLOWANCES AND TREATMENT OF SERVICE ON TERMINATION OF SUSPENSION.
>
> (1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all officer employees.
>
> (2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the Competent Authority may direct:
>
> Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which such allowances are admissible:
>
> Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under regulation 14.
>
> (3)(a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purposes, be treated as

a period spent on duty.

(b) In a case falling under sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose."

16. It has to be also kept in mind that there is also power of review vested in the competent authority of the Bank under Regulation 18 to call for record of any case within six months of the date of final order and reviewing the case for passing such orders thereon as may be deem fit and to that extent Regulation 18 also being relevant for the purposes of this case is quoted hereinbelow:

"18. REVIEW

Notwithstanding anything contained in these regulations the reviewing authority may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit:

Provided that-

(i) If any enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in Clauses (e), (f), (g) or (h) of regulation 4 and an enquiry as provided under regulation 6 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of regulation 6 and thereafter consider the record of the enquiry and pass such orders as it may deem proper;

(ii) If the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of regulation 6, the Reviewing Authority shall give show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass an order after taking into account the representation, if any, submitted by the officer employee."

17. It, therefore becomes very clear on reading of either Regulation 17 or 18 that the Bank cannot travel beyond the subject matter of the departmental proceeding. In other words, any allegation, which was not made subject matter of charge and on which the Enquiry Officer had no occasion to record his finding and in fact the disciplinary authority had not also taken into consideration for inflicting punishment in the considered opinion of this Court cannot be looked into for the purposes of enhancing punishment. Here in this case the previous two punishment inflicted against the petitioner were not subject matter of charge nor the Enquiry officer had recorded any finding in respect of that charge and the disciplinary authority also did not take into consideration while inflicting punishment in his order. Thus, this Court is of the view that when an extraneous material which was

not subject matter of charge was taken into consideration by the appellate authority for the purpose of enhancement of punishment, he has obviously committed an error impermissible under Regulation 17.

18. This Court would like to clarify the aspect that if there is a provision made in Regulation 17 giving liberty to the appellate authority to direct for holding a fresh enquiry in relation to any concluded order of punishment in course of deciding the appeal and the appellate authority has found certain charges where, like in this case, the previous order of punishment were not made subject matter of charge, he had to direct for holding a fresh enquiry. The law on the subject stands well settled in an earlier Constitution Bench judgment of the Apex Court in the case of State of Mysore vs. K.Manche Gowda, AIR 1964 SC 506, wherein it was held that if the punishment was based on previous record of the Government servant that could be only taken into consideration by the punishing authority if that was made subject matter of charge.

19. This Court would immediately hasten to add that the aforementioned case in the case of K.Manche Gowda (supra) was decided at a point of time when the constitutional 42nd amendment was not in force and actually related to a show cause notice prior

to punishment. Subsequently, the Apex Court in the case of Union of India & ors. vs. Bishamber Das Dogra, reported in (2009)13 SCC 102, has gone to hold that the consideration of past record could be taken into consideration by the disciplinary authority even without its being made subject matter of charge and to that extent the Apex Court having discussed the law has held as follows:

> "30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/ service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require."

20. This Court however must indicate here that the cases decided by the Apex Court were in respect of the proceedings at the original stage when the disciplinary authority was yet to make up his mind. No case has been brought to the notice of this case with regard to similar situation in which the appellate authority has to exercise his power by way of enhancing the punishment beyond one which was imposed by the disciplinary authority by

taking new facts. In this background this Court finds that the petitioner also had sought to explain that his previous conduct could not have been looked into for enhancing punishment and had taken a specific plea on those materials being irrelevant for enhancement of punishment. Thus only one line observation of the appellate authority in the impugned order that the submission of the petitioner that he was imposed only a minor penalty is not correct, would not be the correct way of appreciation by the appellate authority. Let it be kept in mind that the effect of such punishment having already been given and the disciplinary authority neither having framed charge nor having recorded finding if he did not find those previous order of punishment to be good enough for removing the petitioner from service by way of compulsory retirement, the appellate authority on his own could not have looked into either personal record or used his personal knowledge of looking into the personal file of the petitioner. At least the Regulation 17 did not give him permission to do so.

21. It is this aspect of the matter which makes this Court to interfere with the appellate order of punishment so far it seeks to enhance punishment beyond what was inflicted by the disciplinary authority of compulsory retirement.

22. Thus, for the reasons indicated above, this Court

would quash that part of the appellate order where the order of punishment has been enhanced beyond one imposed by the disciplinary authority to compulsory retirement. In other words, the punishment against the petitioner, as inflicted of reduction of salary by five stages increment in the time scale of pay in which he was placed as on 18.3.1999 for the period upto 31.12.2006 i.e. the date of his superannuation with cumulative effect with further imposition that he would not earn increment of pay during the period of such reduction and that the reduction will have the effect of postponing the future increment of his pay, is restored.

23. A question, therefore, would now arise as to whether after 15 years of his period of compulsory retirement can he be directed to subjected to a departmental proceeding in relation to previous order of punishment. Let it be noted that the order of compulsory retirement by way of punishment was passed on 20.1.2000 at a time when the petitioner was to attain his normal superannuation as on 31.12.2006 and therefore, now this Court would not permit the Bank to proceed afresh against the petitioner.

24. The petitioner, therefore, having deprived of his continuation in service for the period 20.1.2000 to 31.12.2006 shall only be entitled to difference of his salary beyond retirement benefit for the period 20.1.2000 to 31.12.2006. Let it be made

clear that the petitioner shall not be entitled for any other benefit because the order of punishment as passed by the disciplinary authority has been approved by this Court. In that view of the matter, the authorities of the Bank are only directed to recalculate the difference of salary beyond retirement benefit and its being also paid to the petitioner within a period of three months from the date of receipt of this order.

25. This application is allowed only in part to the extent indicated above.

(Mihir Kumar Jha, J)

surendra/-

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