IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8916 of 2008

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Uma Shankar Jha son of Shri Jai Chandra Jha, resident of Rajeshwari Niwas, Laxmisagar (Sadhugachi), Darbhanga, PS & District-Darbhanga.

.... Petitioner/s

Versus

1. The Punjab National Bank through the Chief Managing Director, H.O.,Bhikhaji Kama Place, South African Avenue, New Delhi.
2. The Zonal Manager, PNB, Intregated Zonal Office, Muzaffarpur.
3. The Regional Manager PNB, Regional Office, Darbhanga, Region, Darbhanga.
4. The Enquiry Conducting Officer-cum-Manager, PNB, Branch Office, Warisnagar, Samastipur
5. The Branch Manager, PNB, Branch Office-Kulharia, District-Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prafull Chandra Thakur, Adv.
Mr. Pramod Kumar, Adv.

For the Respondent/s : Mr. Sharad Kr. Sinha, Adv.
Mr. Amit Kr. Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-01-2015

Heard learned counsel for the petitioner and learned counsel for the Bank.

In this case, the petitioner was initially appointed as Clerk-cum-Cashier at different branches and before his termination, at the last leg of his service in the year 1999, was posted at Punjab National Bank, Kulharia and while serving at Kulharia, he was served letter No. 51 dated 9th December 2013 whereby he was put under suspension and was prohibited to enter into the premises of the Bank and to touch the official records. Thereafter, a departmental proceeding was initiated vide Charge Sheet dated 27th December

2005, where Charge No. 1 deals with that the petitioner has debited customers' accounts unauthorisedly without their confirmation on the debit vouchers, details are there. Charge No. 2 is that he unauthorisedly debited/credited accounts and released vouchers under his signature even though OIC was present in the Branch, details have been given. Charge No.3 is that he closed the following account without the request of the customer and paid the amount through cash order. It has further been stated that the RTI on back of cash order in token of having received the payment does not tally with the RTI of account holder. Charge No. 4 is that he debited customers' accounts unauthorisedly and got the amounts credited in his own accounts, details are there. Charge No. 5 is that he prepared the wrong debit/credit vouchers for covering up the fraud committed in the branch, details are there. In charge No. 6, it has been mentioned that he has debited Exp. M. Power with Rs. 2961/- on 31st November 1999 without enclosing any voucher there with and got suspense entry dated 4th November for Rs. 2000/- outstanding in his name adjusted and issued Cash Order for Rs. 961/-. He also obtained the payment from Exp. Remitting charges of Rs. 2000/- without attaching any bill with the voucher on 12th June 2001 on account of cash brought from BO: TC Darbhanga on 10th April 2001 but actually cash was brought on that day from BO: Khojpur. In Charge No. 7, it has been mentioned that he connived with late OIC Shri Awadhesh Kumar in committing/concealing fraud in the branch and consequently got benefit from him. Charge No. 8 is that he had already obtained the payment on account of taxi bills through his TA bills without attaching taxi bills. Charge No. 9 is that he had put undue pressure on the late incumbent Shri Awadhesh Kumar for sanctioning limit of Rs. 2,00,000/- in the name of Shri Jaishankar Jha on 18th August 2001, while the money was actually utilised by him and amounts were transferred to the account of the petitioner. Charge No. 10 is to cover up the fraudulent transactions in different accounts to tally the balances the petitioner committed interpolation. Charge No. 11 is that he did not refund the advance of Rs. 500/- and Rs. 700/- taken from the suspense account on 8th February 1991 and 16th February 1999 respectively and both the entries were got adjusted fraudulently to the debit of CA 77 of Savitri Devi & Kishore Kumar Mehta and SF 1485 of Awadhesh Kumar on 27th February 1999. Further in Charge No. 12 it has been mentioned that he had put the pressure on the late incumbent Shri Awadhesh Kumar and got officiating allowance beyond his entitlement and last charge is that he connived with the incumbent of the branch obtained undue accommodation mentioned therein.

Charges were further amended and certain were added in Charge No 1, Charge No. 2, Charge No. 6, Charge No. 7 and Charge No. 8.

The petitioner was given a chance to participate in the enquiry there he has put all his card before the Enquiry Officer, Bank itself was represented by its representative, brought all materials to substantiate the charge against the petitioner.

The Enquiry Officer submitted the enquiry report found Charge Nos. 1 to 12 except Charge No. 4, i.e. altogether 11 were proved against the petitioner.

The petitioner was given the 2nd show cause notice with enquiry report of proposed punishment. The petitioner filed reply. The Disciplinary Authority examined all materials on record, the enquiry report, considering the facts and circumstances, passed the order of removal of the petitioner from the service with superannuation benefit in terms of Para 6B of Bipertites Settlement dated 10th April 2002. Against that order, the petitioner filed appeal and the Appellate Authority also considered his case in detail, did not find any error in the order of the Disciplinary Authority, accordingly rejected his appeal.

The counsel for the petitioner has raised a grievance with respect to quantum of punishment, in his support brought on record the letter dated 2nd June 2008 purported to have been generated in the Bank where the proposed punishment has been shown to bring down to the lower stage in the pay scale by two stages but the letter was never issued, as it appears that the matter was referred to the Vigilance for its examination and perusal, thereafter, the Disciplinary Authority changed the punishment and passed the order of removal.

He has further submitted that there is no loss to the Bank and it was only an innocent negligence on account of the work pressure. He has further submitted that the change of the punishment at the behest of the Vigilance shows that there was non- application of mind by the Disciplinary Authority or by the Appellate Authority when they have earlier proposed different punishments. He has further submitted that certain documents were not supplied to the petitioner and his service record is clean.

The counsel for the Bank, in contra, submits that the charges proved against the petitioner are very serious in nature, it was not mere an innocent negligence but is a fraudulent act committed by him, as he has withdrawn the money without the debit vouchers, even utilised the money of the customers without their consent which cannot be said to be an innocent negligence, even if there is no loss of the Bank, it is very difficult for the Bank to keep such employee who is involved in such fraudulent act.

Having considered the rival contentions of the parties, so far giving opportunity to defend his case, the petitioner has raised the grievance of non-supply of certain documents but during the argument, he has not pointed out, which are the documents were not supplied to petitioner nor he is in a position to say that the documents which were not supplied, caused any prejudice him. Mere non-supply of the documents will not lead to violation of natural justice unless it is shown that the documents that were not supplied, have any bearing on his case. So far the ground that has been taken of innocent negligence, he has relied on judgment reported in **AIR 1979 SC 1022** ***(Union of India and others v. J. Ahmed,)*** there the Hon'ble Supreme Court has only defined a mere innocent act of negligence and prudent decision and ultimate para 11 of the aforesaid judgment has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under :

> "Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

But in the present case, facts are quite different, as charge that has been proved against the petitioner cannot be said to be of innocent mistake when he has withdrawn the money of customers without their consent and credited to his account which cannot be said to be a mistake rather it is completely a fraud and dishonesty of highest degree.

So far the other point, the petitioner has drawn the attention, as because there is a change of proposed punishment at the behest of vigilance, the order of punishment is illegal as has been observed by the Hon'ble Supreme Court and in this regard, he has relied on judgment reported in **1991 AIR SC 1507** ***(Nagaraj Shivarao Karjagi v. Syndicate Bank Head Office, Manipal and another)*** where the Hon'ble Supreme Court has said that if the punishment has been modified at the behest of the Central Vigilance Commission certainly in that circumstance order is illegal but that has not been proved by the petitioner. Under the Banking regulation, in a case of fraud and dishonesty, the Bank has to send the matter to the Central Vigilance Commission for perusal and there is no material to suggest in the present case that the Vigilance in any manner has given direction to change the proposed punishment. Even presuming that it was sent for approval, mere sanctioning not sufficient, unless there is some material to show that on the direction of Central Vigilance Commission the order of punishment has been changed, in absence cannot be said to be bad in law.

In case of allegation of corruption and fraud, the Hon'ble Supreme Court has taken very strong view is apparent from

Tara Chand Vyas Vs. Chairman & Disciplinary Authority, reported in **1997 (4) SCC 565** relevant to quote para 2 of the aforesaid judgment, is as follows:

> "Economic empowerment is a fundamental right of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, ensured under Article 46 as a part of social and economic justice envisaged in the Preamble of the Constitution; the State is enjoined to promote their welfare effectuated under Article 38. Distribution of material resources to elongate that purpose envisaged in Article 39(*b*) is the means for the development of the weaker sections. The banking business and services were nationalised to achieve the above objects. The nationalised banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. .Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the

employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and services are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society."

On the point of loss to the Bank, the counsel for the petitioner submits that there is no loss to the Bank even if some mistake had been committed by the petitioner, it will not be a proper order to remove him from service but the Hon'ble Supreme Court in the case of ***Chairman & Managing Director, United Commercial Bank v. P.c. Kakkar,*** reported in **2003 (4) SC 364** has said that even if there is no loss to the Bank, if the Bank Officer has committed a misconduct touching honesty and integrity, he cannot be allowed to continue in the Bank where the Hon'ble Supreme Court has said that a bank officer is required to exercise higher standards of honesty and integrity. The Hon'ble Court has given its reason that they deal 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. It will be proper to quote para 14 of the said judgment, is as follows:

"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.* 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."

In the case of ***Disciplinary Authority-cum-Regional Manager and others Vs.. Nikunja Bihari Patnaik*** reported in **1996 (9) SCC 69**, the Hon'ble Supreme Court has held that acting beyond one's authority is by itself a breach of discipline and is a misconduct. It will be proper to quote para 7 of the said judgment, is as follows:

"It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank 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. It requires the officer/employee to maintain good conduct and *discipline* and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is 'misconduct' within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank — for that matter, in the case of any other organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances — is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very" discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there

> are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit — huge profit, as the High Court characterises it — they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

This Court is exercising the power of Judicial Review, can interfere, in circumstance when findings are perverse and punishment is shocking disproportionate, relevant to AIR 1996 SC 484 (B.C. Chaturvedi vs. Union of India), it will be proper to rely on para 12 and 13 of the judgment, are as follows:

> Para 12 "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence

and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

Para 13 The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

In view of the authoritative pronounced repeatedly by the Hon'ble Supreme Court, this Court feels that the Disciplinary Authority passed correct order which has been affirmed by the Appellate Authority and as such, this Court does not feel inclined to interfere with the order of punishment.

In the result, this petition is dismissed.

(Shivaji Pandey, J)

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