

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 259 of 2015**

Ved Prakash Shukla S/o Shri Yogendranath Shukla, Clerk cum Cashier, Raigarh Kshetriya Gramin Bank R/o village and Post Lailunga, Tahsil Charghoda, District Raigarh, M.P. (Now Chhattisgarh).

**---- Appellant****Versus**

1. Chairman/Disciplinary Authority, Raigarh Kshetriya Gramin Bank, Head Office, Station Road, Raigarh, Tahsil and District Raigarh.
2. Raigarh Kshetriya Gramin Bank, Head Office Station Road, Raigarh, Through its Chairman, Tahsil and District Raigarh.

**---- Respondents**


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| For Appellant   | : | Ms. Naushina Ali, Advocate.       |
| For Respondents | : | Shri Rajendra Tripathi, Advocate. |

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**Hon'ble Shri Navin Sinha, Chief Justice**  
**Hon'ble Shri P. Sam Koshy, J.**

**Judgment on Board****Per Navin Sinha, Chief Justice****25/06/2015**

1. The present appeal arises from order dated 5.12.2014 in Writ Petition No. 2578 of 1996. The Appellate authority had set aside the order for dismissal passed in a departmental proceeding substituting it by reduction in rank. On challenge in the writ petition the Learned Single Judge held the departmental proceeding to be procedurally flawed and was satisfied that in the nature of charges it warranted a remand. But, considering all aspects of the matter, the Learned Single Judge instead of remanding the matter, moulded the relief in exercise of discretionary powers under Article 226 by setting aside the punishment ordered by the Appellate authority with the direction that the Appellant shall be deemed to be in service as Branch Manager without any

interruption, entitled to consequential benefits of notional pay fixation and seniority. The claim for difference of salary on the post of Branch Manager and that of Clerk-cum-Cashier was rejected.

2. Learned Counsel for the Appellant submitted that if the order for punishment was set aside, full salary for the period of suspension ought to have been directed. Relief to that effect had been sought in the writ petition which has not been considered. Reliance was placed on *Bilaspur Raipur Kshetriya Gramin Bank v. Madan Lal Tandon* (Civil Appeal No. 4467 of 2015) disposed on 15.5.2015. Madan Lal Tandon had been dismissed from service. The departmental proceedings were found to be procedurally flawed. Instead of remand order, considering the passage of time, relief was moulded by lump sum payment of Rs. 5 Lacs towards the claim for salary. Therefore, in the alternative to the claim for full arrears of salary, the Appellant may be considered for grant of lump sum payment appropriate in the discretion of the Court. Reliance has further been placed on (2013) 10 SCC 324 (*Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*), (2004) 13 SCC 755 (*State of U.P. v. Ram Avtar Sharma*) and (2011) 14 SCC 379 (*Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank*).

3. Learned Counsel for the Bank has opposed the appeal submitting that the order of the Learned Single Judge is based on exercise of discretionary jurisdiction under Article 226 of the Constitution whereby the relief has been moulded in the facts of the case. *Madan Lal Tandon* (supra) is distinguishable on its own facts as no reinstatement on a lower post was ordered and the employee had remained out of service.

4. We have considered the submissions on behalf of the parties and are not inclined to interfere with the order under appeal passed in the exercise of discretionary jurisdiction by moulding the relief in the facts of the case. The Appellant, a Branch Manager, was suspended on 30.4.1987. Two separate

charge sheets were given on 2.11.1987 and 30.5.1989. The Appellant did not participate in the first inquiry but submitted a written brief. After conclusion of the second inquiry the inquiry officer gave his report on both the proceedings. A show cause notice was issued to the Appellant on 5.1.1994. Dismissal was ordered on 12.5.1994. In the departmental appeal, the appellate authority on 21.4.1995 set aside the punishment of dismissal and ordered reinstatement on the lower post of Clerk-cum-Cashier.

5. The Learned Single Judge was satisfied that the charges were serious in nature to warrant a remand. But, considering the long passage of time and for other reasons discussed it was not considered appropriate to remand the matter. The relief was thus moulded. The Appellant therefore cannot be held to have been exonerated leading to the suspension being totally unjustified. On the contrary, remand was considered appropriate but for the passage of time. The suspension therefore cannot be held to be unjustified on charges which could not be proved. The Appellant has led no evidence of being unemployed for the period of dismissal till reinstatement on the lower post by reduction of quantum of punishment. Thereafter he has received salary on the post of clerk-cum-Cashier, on which post he discharged duties.

6. The exercise of discretionary jurisdiction by moulding the relief can be interfered with only if we find it to be not in consonance with law. If the view taken by the Learned Single Judge is a possible view in the law, it shall not be appropriate exercise of jurisdiction by us to interfere with the same only because we may have the jurisdiction to do so as a superior forum. It is apparent from the discussions contained in the order of the Learned Single Judge that he moulded the relief considering all aspects of the matter, excluding any grant of salary for the period of suspension. There has to be a difference in exercise of discretion by an administrative authority and a Court exercising discretionary jurisdiction to mould the relief in the peculiar facts and circumstances of a particular case.

7. Reliance on Madan Lal Tandon (*supra*), in our opinion, is not appropriate because it related to a case of dismissal.

8. A person working in a bank occupies a fiduciary position. The principles of *uberrimae fidei* applies. He has to discharge his duties with full faith and loyalty considering that he deals with public money. Likewise, we are also satisfied that the full pay as a Branch Manager for the period that he worked as a Clerk-cum-Cashier also cannot be granted as he never discharged duties on the superior post.

9. In (2011) 5 SCC 142 (Chairman-cum-Managing Director, Coal India Limited v. Ananta Saha), it was opined that the issue for grant of arrears of salary after punishment was quashed by the Court or Tribunal is a discretionary matter. There is no straitjacket formula with regard to it for its universal application. In a case of dismissal even if reinstatement was ordered, it would not automatically entitle to back-wages. Factual scenario, principles of natural justice, equity and good conscience would have to be kept in view by the appropriate authority, Court or Tribunal.

10. Deepali Gundu Surwase (*supra*) relied upon by the Appellant is distinguishable on its own facts as it related to removal of a teacher who refused to comply with the dictates of the Headmistress and did not concern a bank employee who stands, as held by us, in a fiduciary position. Even otherwise, in the facts of the case, removal was held to be a case of victimization.

11. Ram Avtar Sharma (*supra*) likewise is again distinguishable on its own facts whether the order for payment of salary for the period of suspension was genuine or forged. Since this ground was not urged before the Tribunal which order was affirmed by the High Court, the Supreme Court declined to go into that question. Anil Gilurker (*supra*) related to dismissal when lump sum compensation was directed to be paid and not where the employee had

continued in service because of reinstatement ordered on a lower post by the appellate authority and issues for moulding of relief did not arise for consideration. The Appellant had submitted his reply on merits to the charges and it was never his case that he had been prevented from filing a proper reply in absence of specific charges causing prejudice to him.

**12.** In conclusion, we find no reason to interfere with the order of the Learned Single Judge. The appeal is dismissed.

Sd/-

(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-

(P. Sam Koshy)  
**JUDGE**