IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.352 of 2013

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Birendra Kumar Singh, S/O Late Indra Deo Singh, R/O Adarsh Nagar, Opposite Chakbandi Office, Near Pirbaba, Mahadeva Road, P.O.- Siwan, P.S.- Siwan, District- Siwan.

.... Petitioner/s

Versus

1. The Central Bank of India, through its Chairman -cum- Managing Director Central Office, Chandermukhi, Nariman Point, Mumbai-400001.
2. The Chairman -cum- Managing Director Central Bank of India, Central Office, Chandermukhi, Nariman Point, Mumbai-400001.
3. The Zonal Manager -cum- Deputy General Manager -cum- Appellate Authority Central Bank of India, Zonal Office, Pawapuri Vihar, N.H. 28, Bhagwanpur, Muzaffarpur.
4. The Regional Manager -cum- Disciplinary Authority, Central Bank of India, Near Head Post Office, Siwan.
5. Sri B.K. De, presently posted as Deputy General Manager, Recovery Department, Central Bank of India, Central Office, Chandermukhi, Nariman Point, Mumbai- 400021.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhruba Mukherjee, Sr. Advocate with Mr. Ganesh Singh, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-08-2016

Heard Mr. Dhruba Mukherjee, learned senior counsel appearing for the petitioner and Mr. Ajay Kumar Sinha, learned counsel appearing on behalf of the Bank.

With the consent of the parties this matter has been heard with a view to its final disposal at the stage of admission itself.

The petitioner was a Cashier in the respondent-Bank and is aggrieved by the order dated 22.2.2011 passed by the Disciplinary Authority –cum- Regional Manager, Central Bank of India, Branch Office, Siwan, Respondent No.4, whereby the petitioner has been vested with the extreme punishment of dismissal without notice under clause-6(a) of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.4.2002 and which order of dismissal has been affirmed by the appellate authority vide order passed on 25.7.2012. Copies of the order passed by the disciplinary authority and the appellate authority are impugned at Annexure-1 and 2 respectively to the writ petition.

The charge-sheet served on the petitioner is present at Annexure-3 series and charges the petitioner who was posted as a Head Cashier in the Majhauli Branch of the respondent-Bank, of sanctioning and disbursement of CKCC loan of Rs. 68.30 lacs of which Rs.38.87 lacs was disbursed and MSTP loan for Rs.15.28 lacs of which Rs.12.74 lacs was disbursed. The loan was sanctioned and disbursed by the petitioner, without obtaining sanction from the competent authority and in absence of the Branch Manager who was the sole authority competent to do so. The period for the default is in between 15.11.2006 to 31.12.2006.

The second charge made against the petitioner is for holding on to the cash key and not handing over the second set of keys to the Special Assistant, Prashant Priyadarshi on his deputation to the branch on 8.12.06.

An enquiry officer and presenting officer was appointed, enquiry held and the Enquiry Report was submitted on 31.10.2007, a copy of which is present at Annexure-4. The enquiry officer found the charges proved. A copy of the enquiry report was served on the petitioner to file his representation which was filed by him on 24.10.2010 vide Annexure-9. The disciplinary authority served the petitioner with a second show cause against penalty, vide Annexure-11 on 12.1.2011 which was responded to by the petitioner vide Annexure-12 dated 2.2.2011. The disciplinary authority not finding the explanation of the petitioner satisfactory enough to discharge him, has imposed the penalty of dismissal vide Annexure-1 and which order of the disciplinary authority has been affirmed by the appellate authority when the appeal filed by the petitioner present at Annexure-13 was rejected vide Annexure-2 by the appellate authority on 25.7.2012. The petitioner feeling aggrieved is before this Court.

Mr. Mukherjee, learned senior counsel appearing for the petitioner has made the following submissions to question the orders impugned:

a) A bare perusal of the second show cause impugned at Annexure-11 read along side the punishment order impugned at Annexure-1 would show that the penalty was already decided and passing of the order was only a completion of formality;

b) The second show cause imputing the petitioner of failure to discharge duty with honesty, integrity and diligently are not the charges found in the charge-sheet;

c) The charge set up against the petitioner, of disbursement of loan was under oral authorization by the Branch Manager and which had even earlier been discharged by the petitioner with no objection from any superior;

d) Even if there would be any irregularity in the discharge of duty by the petitioner, it did not result in any loss to the Bank nor was the loan found fictitious.

e) The representation of the petitioner against the enquiry report as well as against the proposed penalty present at Annexures-9 and 12 respectively in respect of disbursement of loan has not been taken note of by the disciplinary authority;

f) In so far as the charge regarding non-handing over of second set of keys to the Special Assistant is concerned, the proper authority was the Branch Manager and thus the charge against the petitioner of not handing over the keys to the Special Assistant did not constitute a charge as there was no written direction in this regard;

g) The penalty is disproportionate to the charge.

Per contra it is the argument of Mr. Sinha, learned counsel appearing for the respondents that the charge against the petitioner was very serious for even though he was not vested with any authority to either sanction or disburse the loan which is for a huge amount, he has disbursed it, without seeking authorization from the competent authority. He further submits that although the petitioner has mentioned about similar duty being carried out by him earlier but there is no evidence to that effect. In so far as the non-handing over of the keys is concerned, learned counsel has mentioned that the Special Assistant being posted in the branch on 8.12.2006, the petitioner was required to hand over the second set of keys to the Special Assistant.

While it is the submission of Mr. Mukherjee, learned counsel appearing for the petitioner that there was no written order to hand over the keys to the Special Assistant, Mr. Sinha, learned counsel appearing for the respondents in reference to the enquiry report has submitted that on the principle of 'dual control', since at the relevant time it was only the petitioner and the Special Assistant, the two keys should have been in possession of each of the two clerical staff of the Bank so that the Bank operation is carried out smoothly and is not stopped due to absence of the cash keys.

I have heard learned counsel for the parties and I have perused the records.

Before I would be dealing with the charge no.1, I would take charge no.2 first which is of a lesser consequence and in which the petitioner has been charged for non-handing over of keys to the Special Assistant. While the contention advanced on behalf of the petitioner is that in absence of the Branch Manager and in absence of any appropriate direction in this regard he was not bound to hand over the second set of cash keys to the Special Assistant, this specific stand of the petitioner is contested by the Bank on the principle of 'dual control'. In my opinion, considering that the keys in question related to the cash store in the Bank in absence of any specific direction requiring the petitioner to hand over the keys to the Special Assistant and taking note of the circumstances that the Branch Manager was on leave at the relevant time, the conclusion on such charge is contrary to the evidence on record.

Now while Charge No.2, is for the reason that the petitioner did not hand over the keys in absence of a written authorization, the Charge no. 1, of sanction and disbursement of loan, is for the reason that the petitioner took the decision unilaterally, which is exclusively vested in the Branch Manager. Be that as it may, fact remains that the petitioner was holding the post of Head Cashier and certainly was not vested with power of sanction or disbursement of loan. The loan runs in lacs but then its quantification become irrelevant for the petitioner had no jurisdiction to sanction and disburse the loan. This act cannot be pardoned nor any kind of argument would persuade this Court to interfere with the quantum of penalty. The petitioner holding the post of cashier was dealing with public funds and holding a position of trust which was reposed by the public in the Bank. Certainly while discharging the duties of a Head Cashier he was not conferred with any power of sanctioning of loan and even if it is argued by Mr. Mukherjee that there are past instances of such kind and that on oral orders of the Branch Manager, he discharged similar function earlier but considering the nature of duty performed by the petitioner, none of the aforementioned explanations can justify the illegality in the action of the petitioner which without doubt constitutes a misconduct under clause-19.5 of the Bipartite settlement. In fact in the above noted circumstances, the attempt of Mr. Mukherjee, learned senior counsel to argue that the order passed, was pre-determined, is of no consequence.

The orders impugned would not require interference and in fact finds support in the observations of the Supreme Court in paragraph-56 of a judgment since reported in **(2012)13 SCC 142 (Avinash Sadashiv Bhosle vs. Union of India)** which I am tempted to reproduce herein below:

> "56. It must be emphasised that bank officials act as trustees of funds deposited by the public with the bank. They have an obligation to earn the trust and confidence of not only the account-holders but also the general public. The standard of integrity required of the bank officials, particularly the cashiers, accountants,

> auditors and the management at all levels, is like the Caesar's wife, they must be above suspicion. Mr. Bhosale failed to maintain such high standards of integrity. He therefore, acted in violation of Rule 50(4) of the 1992 Rules. We, therefore, do not find any merit in the aforesaid submissions of Mr. Jain."

For the reasons aforementioned I do not find any merit in the contentions advanced by Mr. Mukherjee, learned senior counsel appearing for the petitioner to interfere with the orders impugned either on merits or on the quantum of penalty for in the nature of misconduct complained of, it does not require any indulgence.

The writ petition is dismissed.

(Jyoti Saran, J)

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CAV DATE	
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