IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1438 of 2012

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1. Kedar Prasad Mehta S/O Late Bodh Ram Mahto Branch Manager, Madhya Bihar Gramin Bank Branch, Bain, P.O. & P.S. Bain & District-Nalanda. Resident of Mohalla-Bhaisasur, P.O. Biharsharif, P.S. Bihar, District-Nalanda

.... Petitioner/s

Versus

1. Madhya Bihar Gramin Bank Through The Chairman, Head Office Meena Plaza, South Of Museum, Patna-1
2. The Chairman, Madhya Bihar Grmin Bank, H.O. Meena Plaza, South of Museum, Patna-1
3. The Regional Development Manager, Madhya Bihar Gramin Bank, Controlling Office, Bihar Sharif, Patna
4. Bagish Prasad Mishra (Inquiry Officer) Senior Manager Amhara Branch, P.S. Bihta, P.S. Amhara, District Patna
5. The Director Cum Chairman of the Appellate Board of Madhya Bihar Gramin Bank, Patna-800001

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Raj Kishore Prasad Singh, Adv.
For the Respondent/s : Ms. Archana Palkar Khopde, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 04-04-2017

The petitioner prays for quashing of the order dated 22.7.2011 passed by the disciplinary authority, the Chairman Madhya Bihar Gramin Bank whereby a penalty of reduction of four increments for three years has been inflicted on the petitioner with further stipulation that on expiry of such period, the reduction will not have the effect of postponing the future increments of pay. The order passed by the disciplinary authority has been affirmed by the respondent No.4, the appellate authority when he declined to interfere with the order of penalty vide order passed on 10.11.2011. Copies of the order are impugned at Annexures-31 and 32 respectively to the writ petition.

Facts of the case briefly stated is that the petitioner was appointed with the respondent Bank on 6.9.1980. After having served in different branches, he was posted at the Bargaon Branch of the Bank as Assistant Branch Manager vide transfer order dated 12.7.2006, where he joined on 13.7.2006. The Branch Manager of the Bank Arbind Kumar Sinha was transferred to the Regional Office, Gaya on 23.6.2008 and the petitioner was given the charge of the Branch Manager. A letter was issued to the said Arbind Kumar Sinha on 23.6.2008, a copy of which is placed at Annexure-1 whereby the Regional Development Manager directed him to handover charge of the Branch to the petitioner. The petitioner was at the same time directed to take over charge from the said Arbind Kumar Sinha. The said Arbind Kumar Sinha did not obey the order leading to a reminder dated 25.6.2008 present at Annexure-2. Although the said Arbind Kumar Sinha was directed to handover complete charge of the branch to the petitioner but only a partial charge was handed over on

28.6.2008 vide Annexure-3 but thereafter the said Branch Manager proceeded on leave. The records of the proceedings would reflect that despite effort made by the petitioner in requesting for handing over of the complete charge, the said Arbind Kumar Sinha handed over the documents in installments and in the first lot he handed over 97 documents on 25.7.2008 vide Annexure-15, on 29.7.2008 49 KCC loan documents were obtained after breaking open the lock of the Almirah and in between 566 documents were also received by the petitioner.

Since the said Arbind Kumar Sinha was avoiding handing over the remaining documents that an F.I.R. was instituted by the petitioner giving rise to Nalanda P.S. Case No. 80 of 2008 for recovery of the 944 documents vide Annexure-8/B. It is thereafter that 944 documents was handed over by the said Branch Manager to the petitioner as manifest from Annexure-19 but on verification of the details, it transpired that yet 83 KCC loan documents were missing and for which another F.I.R. was instituted by the petitioner giving rise to Nalanda P.S. Case No. 62 of 2009. The petitioner in the meanwhile was served with the chargememo on 11.8.2009 vide Annexure-24 which imputed four charges against the petitioner namely:

(a) Failure to take over complete charge from Arbind Kumar

Sinha in violation of the orders issued by the head office and the Regional office.

(b) Failure to give information to the head office that despite the transfer order, the Ex-Branch manager Arbind Kumar Sinha was yet extending KCC loan in between 24.6.2008 and 28.6.2008.

(c) Failure to inform the head office that the said Arbind Kumar Sinha the Ex Branch Manager had kept all loan documents with himself and which were not present in the Bank, and;

(d) The petitioner has been giving incorrect misleading and contradictory information as regarding the non availability of 83 loan documents.

The petitioner gave his reply, a copy of which is at Annexure-25, to the disciplinary authority contesting the charge. Vide Annexure-26, the disciplinary authority decided to hold formal proceeding by appointing a Presenting Officer and an Enquiry Officer. The petitioner again filed his exhaustive reply before the disciplinary authority through the Enquiry Officer against the charge vide Annexure-27. The Enquiry Officer on enquiry submitted his report, a copy of which has been handed over during the course of the proceedings by learned counsel for the Bank and the Enquiry Officer while holding charge Nos. 1 and 3 not proved, has upheld the charge Nos. 2 and 4.

As I have already indicated while Charge No.2 related to failure of the petitioner to give information regarding the loans being extended by the said Arbind Kumar Sinha despite his transfer, charge No.4 related to the alleged default on the petitioner in giving incorrect information in respect of 83 loan documents.

The petitioner was served with the copy of the enquiry report by the disciplinary authority on 15.12.2010 vide Annexure-29 asking him to file his response thereto and which has been filed by the petitioner vide Annexure-30. Not being satisfied that the disciplinary authority vide order dated 22.7.2011 has upheld the charge No.2 and 4 to impose the punishment in question vide Annexure- 31 and which order has been upheld by the appellate authority vide Annexure-32. Feeling aggrieved the petitioner is before this court.

Mr. Raj Kishore Prasad Singh learned counsel has appeared for the petitioner, while the Bank is represented by Ms. Archana Palkar Khopde.

Mr. Singh has taken this Court through the sequence of events as already dealt above, to submit that even when the authorities of the

Bank were fully informed and it was within their knowledge that the said Arbind Kumar Sinha was creating problems in handing over of the charge of the Branch despite the efforts put by the petitioner including institution of no less than two police cases against the said Branch Manager, yet his effort has been found wanting by the disciplinary authority to result in the punishment by terming it a 'misconduct' in not being able to take over the charge in its completeness and in not giving proper information to the head office.

It is contesting the argument of Mr. Singh that Ms. Khopde learned counsel for the bank has informed that there are responsibility attached to the post of a branch Manager and the two charges which have been upheld by the Enquiry Officer and confirmed by the disciplinary authority as well as the appellate authority relates to the failure of the petitioner to discharge his obligation.

According to Ms. Khopde, the petitioner having gathered knowledge that the Ex-Branch Manager despite the order of transfer was yet disbursing KCC loan, he did not take sufficient steps to inform the head office in this regard and which was a misconduct on his part in failing to discharge his obligation. It is argued by Ms. Khopde that such act of the petitioner has caused loss to the Bank. It is her submission that since the proceeding does not suffer any procedural infirmity and the disciplinary authority in consideration of the charges and the enquiry report has reached a conclusion, which is in tune with the act of misconduct attributed to the petitioner, it does not require any interference.

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

Of the four charges leveled against the petitioner, a copy of which is at Annexure-24, while the Enquiry Officer has upheld charge no.2 and 4, he has not found sufficient material to uphold the charge Nos. 1 and 3 and the disciplinary authority not chosen to differ with the opinion of the Enquiry Officer.

Despite repetition, I deem it proper to record that while charge no. 2 related to the alleged failure of the petitioner to give information regarding disbursement of KCC loan by the Ex-Branch Manager in between the dates 24.6.2008 to 26.6.2008 despite the order of transfer, Charge No.4 alleges the petitioner of giving misleading information regarding the non-availability of 83 loan documents.

This case has its own peculiarities for in the present case while the misconduct is on the part of the Ex- Branch Manager who does not only face criminal action for his acts but also faces disciplinary action leading to his dismissal from service, the petitioner has been proceeded with, not for any act of misconduct in his discharge of obligation but because of the misconduct of his predecessor in office in not handing over loan documents to the petitioners at one go and in disbursing loan despite the order of transfer. I am at complete loss to appreciate as to how an act of misconduct attributed to a predecessor in office can have a cascading effect on the successor in office. There is no other way in which the petitioner could have taken charge of the documents except requesting the predecessor in office and on his failure, in instituting two police cases against him. It is again not in dispute that the first police case bearing Nalanda P.S. Case No. 80 of 2008 was for non handing over of 944 documents which is manifest from Annexure-19 but since during verification it transpired that yet 83 documents were wanting, that, for which the petitioner has instituted a 2nd case bearing Nalanda P.S.Case No. 62 of 2009. In my opinion, there is nothing further which the petitioner could have done, to take over charge of the remaining documents. Obviously, he could not have adopted extra constitutional methods to take over those documents. Unfortunate situation is that even when the Regional Office was fully aware of the conduct of the Ex- Branch Manager and having failed to pursue him to handover the document that a disciplinary proceeding was instituted against him, there was no occasion for the respondents to proceed against the petitioner on his alleged failure to take over the charge, when the giver himself was refusing to do so and was facing disciplinary proceeding. Clearly, the petitioner has been made an escapegoat in the whole affair.

Coming to the charge individually charge No.2 accuses the petitioner of not informing the authorities regarding the conduct of the Ex-Branch Manager in yet disbursing loan despite his transfer. Now while the petitioner has specifically pleaded that he gave information to the superiors, his stand is rejected even though the petitioner has specifically stated in his reply that the call detail report from the mobile company may be obtained which would support his stand. In my opinion, even if the charge is taken on its face value yet it does not constitute a misconduct because the petitioner cannot be blamed for a misconduct done by his predecessor in office in disbursing loan without authority of law. Whether or not the petitioner informed the head office regarding such act of his predecessor, does not dilute the charge and it is the doer who has to be proceeded and not the person who is expected to make complaint. The damage has already been done by the predecessor in office in extending loan despite his transfer and thus any information by the petitioner would have been a post facto information. It is rather strange that for an act of misconduct by the predecessor in office, it is the petitioner facing the music and there is no evidence of collusiveness.

The other charge upheld against the petitioner is of giving misleading information. In my opinion, Annexures-19 and 20 read alongside would clear all doubts whatsoever against the petitioner.

As I have already indicated, while the first police case, forced the Ex-Branch Manager to handover 944 documents as accepted by the petitioner at Annexure-19 which is a letter dated 6.11.2008, he has explained the current status by his subsequent letter dated 3.2.2009 present at Annexure 20 that on scrutiny of the documents it transpired that yet 83 documents were in possession of the Ex-Branch Manager which needed to be procured. The Ex-Branch Manager having failed to handover those 83 documents has led to the institution of the second police case giving rise to Nalanda P.S. Case No.62 of 2009.

The facts on record do confirm utmost sincerity on the petitioner in trying to procure the documents from his predecessor but even if he failed to obtain the same, it cannot be termed a misconduct to invite a penalty.

A similar issue containing similar charges of in efficiency fell for consideration before the Apex Court in the judgment rendered in the case of **Union of India Vs. J. Ahmad [(1979)2SCC 286]** as manifest from paragraph 7 of the judgment and the opinion expressed at paragraph 9 and 11 squarely applies to the present case and runs as follows:

> " 7. To appreciate the contention it is better to have a look at the charges framed against the respondent. They are as under:
>
> (i) Completely failed to take any effective preventive measures against widespread disturbances breaking out in Nowgong District in spite of adequate warning being conveyed;
>
> (ii) Showed complete lack of leadership when the disturbances actually did break out and failed to give proper direction to your subordinate Magistrates and co-ordinate co-operations with the police to restore law and order;
>
> (iii) Did not personally visit the scenes of disturbances within the town or in the rural areas, in time to take personal control of the situation and to exercise necessary supervision;
>
> (iv) Did not keep Government informed of the actual picture and extent of the disturbances;
>
> (v) Showed complete ineptitude, lack of forsight, lack of firmness and capacity to take quick and firm decision and were, thus largely responsible for complete breakdown of Law and Order in Nowgong town as well as the rural areas of Nowgong District."

The Supreme Court on examination of the charges held as follows in paragraph 9 :

> "**9.** The five charges listed above at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charges. To wit, Charge 2 refers to the quality of lack of leadership and Charge 5 enumerates

ineptitude, lack of foresight, lack of firmness and indecisiveness. These are qualities undoubtedly expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post or not or having been promoted, whether he should be retained in the higher post or not, or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the Discipline and Appeal Rules so as to incur penalty under Rule 3. Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules. The words "act or omission" contemplated by Rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 ("Conduct Rules" for short). The Government has prescribed by Conduct Rules a code of conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding responsible post or lack of aptitude or qualities of leadership would not constitute as failure to maintain devotion to duty. The expression "devotion to duty" appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

…….......…………………………………………”

While taking note of the dictionary meaning of the word ‘misconduct’, the court has held in paragraph 11 as follows:-

“11…………A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct as was held by this Court in P.H.Kalyani Vs. Air France, Calcutta, wherein it was found that the two mistakes committed by the employee while checking the load sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore the negligence in work in the context of serous consequences was treated as miscondct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah* v. *Manager, Ahmedabad Coop. Department Stores Ltd.*8). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

A similar view was taken by the Supreme Court in a judgment reported in **AIR 1992 SC 2188 (State of Punjab Vs. Ram Singh)**. Para 4 and 5 of the judgment reads thus:

"4. Misconduct has been defined in Black's Law dictionary, Sixth Edition at page 999 thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.'

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'

In P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821, 'misconduct' defines thus:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion if left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

5. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term

> occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. ………."

During the course of hearing of this application Mr. Singh had handed over the charge framed against the said Ex- Branch Manager Arbind Kumar Sinha and bare perusal of charge No. 18 would show that the 83 missing documents for which the petitioner had made complaint vide Annexure-20 on 3.2.2009, is one of the charge framed against the said Arbind Kumar Sinha. It is again rather strange that even when the information given by the petitioner vide Annexure-20 dated 3.2.2009 was accepted by the respondents and a charge to that effect was also framed against the Ex -Branch Manager Arbind Kumar Sinha, yet the disciplinary authority has held the petitioner guilty of giving distorted and misleading information.

My discussions above would confirm that it is basically the alleged failure of the petitioner to come up to the expectations of the superiors which has landed him in the trouble to invite the punishment because the steps taken by him are the steps which any officer on duty would have taken to take over the charge and even if it has not given the desired result yet certainly such charge cannot be construed as the misconduct for being proceeded departmentally nor can be a foundation to invite a punishment even of a minor nature.

For the reasons and discussions aforementioned, the entire proceedings including the order of disciplinary authority at Annexure-31 together with its affirmation by the appellate authority vide Annexure-32 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with consequential relief.

Bibhash/- **(Jyoti Saran, J.)**

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