IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7345 of 2009

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Vinay Kumar Rai son of late Braj Nandan Singh, resident of Mohalla Rasoolpur, Jilani, Majhawalia Road, Police Station – Kaji Mohammadpur, P.O., G.P.O., District Muzaffarpur.

.... Petitioner

Versus

1. The Central Bank of India through its Chairman-cum-Managing Director, Chandramukhi Building Nariman Point, Mumbai.
2. The Zonal Manager, Central Bank of India, Zonal Office Club Road, Muzaffarpur.
3. The Regional Manager, Central Bank of India, Speaker Chowk, Muzaffarpur.
4. The General Manager, Central Bank of India, Plot no. 26, Sector –II, C.B.C. Belapur, Navi, Mumbai.
5. The Assistant Gural Manager, Regional office, Speaker Chowk, Distt. Muzaffarpur.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Mukesh Kant
For the Respondent/s : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 09-05-2017

Heard Sri Mukesh Kant, learned counsel for the petitioner and Sri Ajay Kumar Sinha, learned counsel appearing on behalf of respondent/Central Bank of India (hereinafter referred to as 'Bank').

2. The petitioner has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash the appellate order dated 04-02-2009 whereby the punishment imposed upon the petitioner of compulsory retirement has been confirmed. The petitioner has also prayed for quashing of entire disciplinary proceeding, which was initiated against him.

3. Before I proceed further, it would be necessary to

notice that on 02-07-2009, a Bench of this Court had categorically said that “*This application can only be considered for the limited aspect of proportionality of sentence. There are no other legal issues involved to be considered”* and thereafter, the learned counsel for the Bank was asked to file counter affidavit.

4. Short fact of the case is that the petitioner while was functioning as Assistant Manager at Amwara Chowk branch of the Central Bank of India, there was allegation of certain misconduct committed by the petitioner and finally, while he was posted as Manager, Dumra Branch, a memo was issued against the petitioner asking his explanation on the point that on 15-11-2002, one Dinesh Mahto, SB A/c holder of Amwara Chowk branch had approached the branch for maturity payment of F.D.Rs. After that he desired to reinvest Rs. 2,68,800/- in MMDC scheme of the Bank, which was debited to his SB account, but the petitioner, instead of Bank F.D.R., issued F.D.Rs. of the Central Bank Adhikari Grih Nirman Swablambi Sahkari Samiti. In the year 2006, when Sri Mahto approached Branch for pre-mature payment of said FDR’s, he was surprised to know that the said FDR’s don’t pertain to Ambara Chowk Branch of the Central Bank of India, but said Samiti. When Sri Mahto contacted the petitioner, the petitioner issued four cheques of CD account no. 329 Sahu Pokhar Branch, which also returned unpaid due to insufficient

fund. It was also indicated in the memo that the party had no other option but to file a suit against the petitioner. The said memo was replied by the petitioner and finally, a regular departmental proceeding was initiated against the petitioner. In the departmental proceeding, the conducting officer found him guilty and finally, punishment of compulsory retirement was passed by the disciplinary authority, vide order dated 08-05-2008 issued under the signature of Zonal Manager-cum-Disciplinary Authority (**Annexure – 8** to the writ petition). The petitioner thereafter filed an appeal, which too was rejected, vide order dated 4th February, 2009 (**Annexure – 1** to the writ petition). Thereafter, the petitioner approached this Court by filing the present writ petition.

5. Since, at the very outset, a Bench of this Court had recorded that the writ petition can only be heard on the quantum of punishment, learned counsel for the petitioner has confined his argument to the quantum of punishment. He submits that the charge, on which the petitioner was held guilty, was actually not misconduct on the part of the petitioner and as such, in absence of any misconduct, the order of compulsory retirement was excessive & harsh and as such, same is liable to be set aside. Relying on a recent judgment of this Court, reported in **2017 (2) PLJR 634 (Ravindra Nath vs. Chairman, Uttar Bihar Gramin Bank)**, he submits that

once there is no element of any misconduct, the order of punishment of compulsory retirement is required to be interfered with.

6. Sri Ajay Kumar Sinha, learned counsel for the respondent/ Bank, opposing the prayer, submits that so far as quantum of punishment is concerned, time without number, it has been held that unless the punishment is shocking to the conscience of the Court, the Court is required to be refrained from interfering with the quantum of punishment. To substantiate his submission, he has placed reliance on a recent judgment of the Apex Court, reported in **(2015) 2 SUPREME COURT CASE 610 [UNION OF INDIA AND OTHERS Versus P. GUNASEKARAN]**. By way of referring to paragraph – 13 of the aforesaid judgment, he has argued that the Apex Court has prescribed certain circumstances, in which, High Court was refrained from interfering. He submits that one of the point, which has been discussed in paragraph – 13 of the afore-referred judgment of the Apex Court, relates to interference with the quantum of punishment. He reiterates that unless the Court is satisfied that the sentence is shocking to the conscience of the Court, this Court may not interfere. To substantiate his submission, he submits that the petitioner, while holding managerial post in the Bank, had committed serious misconduct, which had tarnished the image of the Bank. Even the customer, who was cheated by the petitioner, had filed a criminal case

against the petitioner. He submits that besides holding the post of Bank, as Assistant Manager, at the relevant time, he was also Secretary of a Cooperative Society, registered under the Cooperative Societies Act, 1935 and the charges, for which the petitioner was proceeded, indicate that it was touching the integrity of the petitioner. He further submits that in case of bank officials, time without number, the Supreme Court has held that the standard of Bank officials is required to be maintained at very high pedestal. On this very point, he has referred to a judgment of the Supreme Court, reported in **(2003) 4 Supreme Court Cases 364 (Chairman & Managing Director, United Commercial Bank and Ors. Vs. P.C. Kakkar)** and has specifically placed reliance on paragraph – 14 of the judgment. On aforesaid ground, he submits that it appears that Bank had taken lenient view in the matter and instead of passing order of removal, the petitioner was allowed to compulsorily retire. According to Sri Sinha, the punishment of compulsory retirement in the circumstances as well as allegation of charge is much lesser and as such, in no way, it can shock the conscience of the Court and as such, this Court may not interfere with the quantum of punishment.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Before going into the detail, the Court proposes to incorporate the finding of the

disciplinary authority, which is at page 42 to 45 of the petition, which is quoted hereinbelow:-

> **"On minutely going through the Inquiry proceedings exhibits adduced in the Inquiry, written brief submitted by both the parties, findings of the IA and submission made by the CSO on the findings of the IA, my observation/inference is as under:-**
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> **The Facts come out from the Inquiry that while working in Amwara chowk branch as Asstt. Manager, Mr. V. K. Roy managed deposit of Rs. 260800/- for the Central Bank Adhikari Grih Nirman Swablambi Sahkari Samiti, Sahu Pokhar from Mr. Devendra Mahto & his wife Smt. Kalika Devi a valued & old customer of our Amwara chowk branch having HSS a/c no. 2945 since 06.11.92 {M.Ex. 13(e)} and MMDC no. 20/61 & 20/62 dtd. 05.07.99 Rs. 50,000/- each and 26/18 Rs. 50000/- & 17/173 Rs. 25000/- dt. 28.11.96 {M.Ex. 9(a) to 9(d)}. It appears from M.Ex. 9(a) to 9(d) that its maturity dates were 02.10.2002, 05.10.2002, 03.08.2002 & 28.08.2002 respectively and on the back side, it appears to be discharged on 12.11.02 with instructions of depositors to credit the proceeds in their HSS a/c 2945. Mr. V. K. Roy credited the maturity proceeds of said MMDC's Rs. 2,60,811/- in HSS a/c 2945 on dt. 15.11.02 under his signature after completing entire accounting process himself through credit vouchers M.Ex. 10(a) to 10(d). It has been confirmed by MW1, Sri Shiv Shankar Ram during his examination in chief Ans to Q.No. 1 & 2 on EPP 15.**
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> **On the same date Mr. Roy managed withdrawal of Rs. 260800/- from HSS a/c 2945 of Mr. Dinesh Mahto & Smt. Kalika Devi by obtaining withdrawal slip (M.Ex.2) signed by Mr. Mahto and got it deposited in CD a/c no. 103 of the Central Bank Adhikari Grih Nirman Swablambi Sahkari Samiti, Sahu Pokhar maintained with our Amwara chowk branch through CD deposit slip (M.Ex.3). The M.Ex.2 was passed by Mr. Roy and M.Ex.3 was signed by Mr. Roy & Mr. Dinesh Mahto. The same has been confirmed by the MW1 Ans to Q.No. 4 & 5 on EPP 15 & 16. It has also been brought into record by the presenting officer on EPP 16, that the amount of Rs. 260800/- withdrawn from HSS a/c 2945, was deposited in CD a/c no. 103 as appearing from the narration made on the back side of M.Ex.2 "TOKEN No.6 Rs. 260800 CD A/c No. 103 KO" and on M.Ex. 3 Rs. 260800/- "Bachhat Khata SE" which is generally**

written in transfer of funds from one account to another. Here the cash transaction was shown only to hide the fact of transfer of fund from saving a/c no. 2945 to CD a/c 103 of Co-operative Society. Against the deposit of Rs. 260800/- made in the said CD a/c No. 103, four MMDC certificates for Rs. 70000/-, Rs. 70800/-, Rs. 50000/- & 70000/- 5(a) to 5(d) were issued in the joint name of Mr. Dinesh Mahto & Smt. Kalika Devi by the said Co-operative Society on 15.11.2002 giving back dated effect of deposit as on 03.08.02, 05.10.02 or likewise mentioning the name of the branch Amwara chowk. The benefit of back dated effect of deposites was given to the depositors on renewal of deposits in the same bank and not for fresh deposit or deposit transferred from other institution. But, in these cases such benefits were shown to be given by the said Co-operative Society to the depositors on fresh deposit from the dates on which the MMDCs of our bank M.Ex. 9(a) & 9(d) were matured for payment. All these four deposit certificates were issued under single signature of Mr. V. K. Roy. The same has been confirmed by MW1 Ans to Q.No.9.

Mentioning the name of Amwara chowk branch on MMDC certificates issued by the Central Bank Adhikari Grih Nirman Swablambi Sahkari Samiti, Sahu Pokhar and giving back dated effect of deposit without having fund of depositors on dates and these were the dates on which MMDC certificates with our Amwara Chowk branch had matured, clearly shows that the deposits were made giving in an impression to Mr. Dinesh Mahto that the deposits were being reinvested with Central Bank of India, Amwara Chowk branch itself. Moreover, MMDC certificates of Co-operative look similar to our bank's MMDC certificate in all respects. To keep customers in dark 'Central Bank' had been got printed in bold letter at prominent place whereas Adhikari Grih Nirman Swablambi Sahkari Samiti has been printed in very small letters. The transaction made on 15.11.02 in saving account no. 2945 & CD a/c 103 are also reflecting in statement of accounts of M.Ex. 1 (saving) & M.Ex. 4 (D/D) but no transaction is reflecting in CD a/c 103 on 03.08.02 & 05.10.02 the back dates mentioned in MMDC's issued by the co-operative. The same was also confirmed by MW1 on EPP 15 to 16 & 18 to 20.

Here, it is important to mention that said Co-operative Society is run by Mr. Roy in the capacity of Secretary having CD a/c 329 with our Sahu Pokhar branch & C/D a/c No. 103 with our Amwara chowk

branch in which he was one of the signatories in operation of the account as appearing from M.Ex. 11 (signature card). The registered office of the society was at Sahupokhar, Muzaffarpur and mentioning the name of Amwara Chowk branch in the deposit receipts were basically to give an impression that receipts were in fact issued by bank. Moreover, this also gives clear impression that as Mr. Roy was posted at Bank's Amwara Chowk branch as Asstt. Manager, the society at Amwara Chowk was run by him only.

Mr. Roy was working in the Central Bank of India, Amwara Chowk branch as Asstt. Manager for which he was being paid salary and it was expected from him to act only in the interest of the bank and mobilize deposit/business for the bank from the existing customer as well as from new customers. But, in contrary he snatched deposit/business from the existing customers of the bank for the said Co-operative Society at bank's cost. His, such act shows that he indulged himself in the act of parallel banking.

To refute this charge, the defence side has made arguments that Mr. Mahto withdrew money from his saving a/c no. 2945 for his own purpose and deposited the same in CD 103 of Co-operative as per his will to get the benefit of higher rate of interest. He further argued that token was issued to Mr. Mahto for cash payment as appearing in M.Ex. 2 and the deposit slip of C/D a/c no. 103 was also signed by Mr. Mahto as depositors whereas Mr. Roy has signed on deposit slip as passing officer. This argument of the defence side is not tenable because the narration made on back side of the both documents (M.Ex. 2 & M.Ex. – 3) reveals that it was a transfer of fund by way of cash transaction. So, it is clear that Mr. Mahto withdrew the money from saving account no. 2945 with the intention to reinvest in MMDCs. The arguments of the defence side that Mr. Mahto deposited the money in CD 103 as per his will to get benefits of higher interest is also not sustainable because Mr. Mahto was kept in an impression by the CSO that the deposits were being reinvested in the branch and that in why he was given back dated effect of deposits so as not to raise any doubt. It also reveals from the fact as mentioned in the compliant that if Mr. Mahto was aware about the deposit with Co-operative Society, then why he came to the branch to take premature payment of said deposit rather he should have directly gone to the office of Co-operative Society at Sahu Pokhar, Muzaffarpur.

Further, the argument of higher rate of interest offered by Co-operative Society to attract depositors

are also not sustainable because 1% higher rate of interest was negligible in comparison to risk involved in investment of money with Co-operative Society. Moreover, Mr. Mahto was not aware that he was investing deposit with Co-operative Society. All the above facts clearly show that Mr. Roy used his position to divert the bank's deposit to Co-operative Society due to his interest involved in said Co-operative Society.

The argument of the defence side that during the period of Mr. Roy, the business of branch has increased has no relevance with the charge.

Rather bank's business has suffered due to diversion of deposit of Rs. 260800/- from bank to Co-operative Society's account.

In respect of the last part of the charge that Mr. Roy tarnished the image of the bank, it is evident from the complaint letter of Mr. Dinesh Mahto received from the Central Office M.Ex. {13(a) to 13(p)} that he only came to know about his deposit invested in MMDC with the said Co-operative Society when he approached the present Branch Manager, Amwara Chowk for pre-mature payment of deposit. Immediately after knowing the facts he contacted Mr. Roy for pre maturity payment of MMDCs who issued five cheques M.Ex. 6(a) to 6(e) on CD account 329 maintained by said Co-operative Society with our Sahu Pokhar branch. The same has been confirmed by MW1 Ans to Q.No. 18 & 19 and Ans to Q. No. 11 & 12. When these cheques were presented for payment three cheque were returned unpaid due to insufficient funds in CD A/c no. 329 by Sahu Pokhar branch through cheque returning memo's dt. 05.09.06, 06.11.06 and 19.10.06 {M.Ex. 7(a) to 7(c)}, which is also corroborated by MW1 Ans to Qu. No. 13. The M.Ex. 8(a) to 8(d) the letter issued by Sahu Pokhar branch also confirm about returning of cheque due to insufficient of fund. Further, on perusal of statement of accounts of CD a/c No. 329 maintained with Sahu Pokhar branch M.Ex. 12(a) to 12(e) that out of five cheques only one cheque was paid on 02.02.06 and other four cheques were not paid the same has been also confirmed by MW1 Ans to Q. No. 15.

On receipt of returned unpaid cheques, Mr. Mahto, who found himself deceived by Mr. Roy filed a criminal case no. 1382/2006 against him with CMJ. It is evident from M.Ex. 13(I) to 13(Q) annexures enclosed with the complaint. The news published in the newspaper dt. 08.11.06 {M.Ex. 13(P)} mentions that Mr. Dinesh Mahto lodged case against Mr. V. K. Roy, Dumra branch for forgery of Rs. 35000/- from his

account, which certainly has shaken the faith of general public in the bank and has tarnished the image of the bank among public.

To counter the charge, the defence side has argued that said cheques were issued by co-operative society on which Mr. Roy has signed in the capacity of Secretary. This argument of defence side is not tenable because being found deceived by Mr. Roy, Mr. Mahto lodged criminal case against him which was published in the newspaper. Since, Mr. Roy had committed such acts while working in Amwara Chowk branch as an officer of the bank as such publicity of the news in the newspaper about filing of criminal case against him for the forgery in saving account of Mr. Mahto certainly not only tarnished the image of the bank among public but also jeopardize the interest of the bank.

Further, three point raised by the CSO in his submission on the findings of the IA has already been discussed in the inquiry. The other points raised on the findings of the IA have no relevance with the charge.

In view of the above-discussed facts I come to the conclusion that Mr. Roy while sitting in the branch-acted contrary to the interest of the bank and at the cost of the bank rather indulged himself in the act of parallel banking. Due to his such acts the bank's business has suffered, the bank's has been jeopardized and the image of the bank has been tarnished.

As such, I agree with the findings of the IA and find charge against Mr. Roy as proved.

Hence, I inflict the punishment as under:-

"*Compulsory retirement under Reg. 4(h) of Central Bank of India Officer Employees (D & A) Regulation 1976 amended uptodate*."

8. On examination of the order of the disciplinary authority, the Court is of the opinion that the disciplinary authority has taken very lenient view ignoring the seriousness of the charge against the petitioner and as such, the punishment, which has been imposed against the petitioner, may not be termed as 'Severe Punishment' shocking the conscience of the Court. At this juncture, it

would be appropriate to quote paragraph – 14 of the **P.C. Kakkar's case** (***supra***), which is as follows:-

> **"14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the 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 (1996) 9 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."**

9. This Court also proposes to incorporate paragraph – 13 of the **P. Gunasekaran's case** (***supra***), which is as follows:-

> **"13. Under Article 226/227 of the Constitution of India, the High Court shall not:**
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> **(i) re-appreciate the evidence;**
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> **(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;**
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> **(iii) go into the adequacy of the evidence;**
>
> **(iv) go into the reliability of the evidence;**
>
> **(v) interfere, if there be some legal evidence on which findings can be based.**
>
> **(vi) correct the error of fact however grave it may**

appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

10. On going through the aforesaid judgment, the Court is satisfied that it would not be appropriate to interfere with the quantum of punishment. Since the case was addressed only on the quantum of punishment and the fact that punishment imposed is much lesser than the seriousness of the charges, the Court is of the opinion that quantum of punishment requires no interference.

11. The writ petition stands dismissed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.05.2017
Transmission Date	N/A