IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.905 of 2015

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1. Ajay Kumar S/o Late Rajendra Prasad, Resident of No. 64-S.B.I. Staff Colony Digha Ghat, District Patna - 800011.

.... Petitioner/s

Versus

1. The General Manager, State Bank of India.
2. Appellate Authority and Deputy General Manager (B & O) Zonal Office, J.C. Road, Patna -800001.
3. The Asstt. General Manager (Admin.) & Disciplinary Authority, S.B.I. Administrative Officer, Patna.
4. The Branch Manager, State Bank of India, S.K. Nagar Branch, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Adv.
		Mr. Ram Sandesh Roy, Adv.
For the Respondent/s	:	Mr. Mukund Jee, Adv.
		Mr. K.K. Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-09-2017

The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing of the order dated 15.10.2014 passed by the appellate authority-cum- Deputy General Manager, State Bank of India, Zonal office, Patna whereby he has been pleased to affirm the order dated 30.5.2011 passed by the disciplinary authority and uphold the punishment of removal from service with superannuation benefits without disqualification from future employment in term of paragraph 6(b) of the Memorandum of Settlement on Disciplinary Action

Procedure dated 10.4.2002. Copies of the order passed by the disciplinary authority and the appellate authority are impugned at Annexures-10 and 14 respectively to the writ petition. The petitioner alongside prays for reinstatement with consequential benefits.

Facts of the case leading to the writ petition in brief is that the petitioner was posted as Assistant in the State Bank of India, S.K. Nagar, Patna when he received a show cause dated 1.6.2007 issued by the Branch Manager, State Bank of India, S.K. Nagar, Patna seeking explanation on three charges mentioned therein relatable to: excess drawing made by the petitioner from his account; seeking help from borrowers to liquidate the overdraft and failing to explain the source of cash deposit made by him towards liquidation of his loan of Rs. 75,000/-. A copy of the show cause dated 1.6.2007 is impugned at Annexure-1. The petitioner filed his reply on 8.6.2007 clarifying the position, a copy of which is present at Annexure-2 but was visited with memorandum of charges on identical lines dated 16.12.2009, a copy of which is placed at Annexure-3. The petitioner again filed his defence vide Annexure 4 but it failed to satisfy the disciplinary authority who initiated proceedings vide Annexure-5 dated 20.3.2010. An enquiry was held, the report of which was submitted on 18.10.2010 vide Annexure-6. The petitioner was served with show cause on the proposed punishment dated 28.3.2011 vide Annexure-7 which was again exhaustively replied by him vide Annexure-8 on 18.4.2011. The disciplinary authority not being satisfied with the explanation given by the petitioner to the allegations has proceeded to order for his removal from service with superannuation benefits which would not be a disqualification for future employment in purported exercise of power vested to him in para 6(b) of the **Memorandum of Disciplinary Procedure** for workmen dated 10.4.2002. A copy of the order of removal passed on 30.5.2011 is impugned at Annexure-10. The petitioner filed a statutory appeal before the appellate authority-cum- Deputy General Manager on 13.7.2011 and which was dismissed by the appellate authority vide order passed on 23.8.2011 impugned at Annexure-11.

Feeling aggrieved by the removal the petitioner moved this Court in C.W.J.C.No.23515 of 2012 and which was allowed by a coordinate bench vide judgment and order passed on 6.5.2014 enclosed at Annexure-12 to the writ petition. The coordinate bench while quashing the appellant order remitted the matter to the appellate authority for passing an order afresh to be accompanied with reasons and while doing so, also consider the reasonability on the quantum of punishment. On remand, the appellate authority has passed a fresh order on 15.10.2014 reiterating the earlier punishment which is impugned at Annexur-14 to the writ petition and feeling aggrieved the petitioner is before this court.

Exhaustive arguments have been advanced by Mr. Mrigank Mauli learned counsel for the petitioner and which has been contested by Mr. K.K. Sinha learned counsel appearing for the Bank.

It is the argument of Mr. Mauli learned counsel for the petitioner in reference to the charge impugned at Annexure-3 that the allegation of overdraft as charge No.1 is without any foundation inasmuch as each withdrawal had the approval of the Branch Manager. It is further his argument that even though the loan credits remained outstanding for some time but then it was liquidated by the petitioner with the help of his friends as well as from his own resources. In response to charge No.2 it is has submitted that even if the proprietors of M/s Aryodaya and Jay Maa Kali Cementwala were borrowers from the Bank but since they were known to the petitioner and his family since long before, which position has also been endorsed by the proprietors during their deposition before the Enquiry Officer, their mere status as a borrower with the bank would not translate the help so extended by them into a misconduct within the disciplinary rules. It is submitted in reference to charge No.3 that the petitioner had produced a receipt issued by the local Jeweller to support his contention that the capital had been generated by him by sale of ornaments of his family and even if it did not satisfy the enquiry officer, it did not constitute a misconduct to invite a penalty.

Learned counsel has referred to the judgment of this Court passed in C.W.J.C.No.23515 of 2012 as contained in Annexure-12 to submit that the opinion expressed by the Bench on the alleged charge as well as on the quantum of punishment, has failed to be noticed in the order of the appellate authority impugned at Annexure -14 passed on remand of the matter by this Court. According to learned counsel the appellate order is a mechanical endorsement of the earlier view without the appellate authority bothering to satisfy himself on the issues noted by this Court in the earlier round of proceedings while ordering for a remand. Learned counsel has produced a copy of the Memorandum of Settlement on the Disciplinary Action and Procedure For Workmen Staff dated 10.4.2002, to submit that although Clause 5(j) of the memorandum of settlement classifies any act which is prejudicial to the interest of the Bank or amounts to gross negligence or a negligence involving or likely to involve the Bank in serous loss, as an act of ‘gross misconduct’ but neither the act of taking help from borrowers is classified as a gross misconduct under paragraph 5 nor the said act can be charged as prejudicial to the interest of the Bank or would involve the Bank in gross loss or amounts to gross negligence.

In short, the submission of Mr. Mauli is that while charge No.1

in so far as it alleges withdrawal without sanction, is not resting on any evidence, the charge No.3 which alleges a failure of the petitioner to satisfactorily explain the source of cash deposit, is no charge at all nor the charge no.2 regarding the help taken by the petitioner from the proprietor of two firms who are borrowers with the Bank, would constitute a misconduct under the disciplinary rules to invite penalty of removal.

The argument of Mr. Mauli has been contested by Mr. Sinha to support the impugned orders with reference to the copy of the cheques issued by the petitioner placed on record at Annexure-B series to the supplementary counter affidavit filed on behalf of the Bank. He submits that none of them bear the endorsement of the Branch Manager and which would confirm that it was passed without any sanction.

In so far as the charge No.2 regarding taking help from the borrowers is concerned, learned counsel has referred to the Chapter 19 of the award which relates to disciplinary matters and at paragraph 19.1 (iii) provides that any infringement of rules of conduct prescribed for the employees would amount to misconduct. Mr. Sinha while referring to the rules of conduct described in Annexure-19.2, has submitted that paragraph 1(i) thereof puts the employees under caution when it inter alia provides that an employee of the bank may not borrow money or permit a member of his family to borrow money from a broker or a money lender or a subordinate employee of the bank or a person, firm or company dealing with the bank. In reference to the said stipulation he submits that since the proprietor of the two firms were borrower with the Bank, the act of the petitioner in taking help from them was found in contravention of the said stipulation and thus a misconduct. Learned counsel has next taken this Court to paragraph 5 of the said Annexure to submit that an over withdrawal without prior authority of the competent authority has also been held a misconduct. A copy of the extract on Disciplinary Matters so relied upon by Mr. Sinha is enclosed at Annexure-D to the supplementary counter affidavit.

In support of the charge No.3 regarding non disclosure of the source by the petitioner, learned counsel has referred to the finding of he Enquiry Officer to submit that the receipt so produced by the petitioner was not acceptable to the Enquiry Officer. Learned counsel summarizing his arguments has submitted that since the act of the petitioner in drawing excess amount without sanction of the appropriate authority itself was a misconduct, his taking help from the borrowers with the Bank only perpetuated this position and his failure to disclose the source of his deposit was in addition thereto. It is submitted that in such uncontested circumstances, the orders impugned requires no interference.

In support of his submission on the scope of interference by the High Court in disciplinary matters including the issue of quantum of punishment, learned counsel has relied upon the judgment reported in **(1994) 2 SCC 537 (State Bank of India Vs. Samarendra Kindro Endow)** paragraph 10 to 15. Learned counsel in reference to the judgment of the Supreme Court reported in **(2003) 3 SCC 38 (Lalit Kokali Vs. Canara Bank)** more particularly paragraphs 14 to 22 has submitted that the strict rules of evidence are not to be followed in disciplinary proceedings which are to be tested on the preponderance of probability. Learned counsel has also referred to the Division Bench judgment of this court reported in **2015 (1) PLJR 117 (Management State Bank of India Vs. Rishikesh Mishra)** to again remind this Court on the limited scope of judicial intervention in disciplinary matters.

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

In the nature of the dispute which has engaged this Court, I deem it necessary to place on record the charges confronting the petitioner as found in the memorandum of charges impugned at Annexure-3 which runs as under:

> "It has been decided to initiated Disciplinary Action against you for the following charges:-

> i) You have deliberately overdrawn beyond the limit of Rs. 3.00 lacs in your CA OD A/C No. 10223782514 on 20 occasions from 24.06.2005 to 12.04.2007, thereby rendering above account irregular by Rs. 1.43 lac. The irregularity continued for more than a year.
>
> ii) You have liquidated these over drawings on 23.5.2007 and 24.5.2007 by taking credit of Rs. 20,000/- and Rs. 50,000/- from our two Cash Credit borrowers M/s Aryodaya and M/s Jai Maa Kali Cementwala respectively to liquidate these over drawings against stipulations of the service condition and credited the same to your SB A/C No. 10223875056 from where fund was utilized to liquidate overdrawing in CAOD A/C No. 10223782514
>
> iii) You have deposited cash of Rs. 40,000.00 & Rs. 5000.00 in your account No. 10223875056 on 23.5.2007 and Rs. 30,000.00 in the account No. 10223782514 on 24.05.2007. You have failed to satisfactorily explain the source of cash deposited in your account.
>
> 2. The above charges, if established, would amount to Gross misconduct in terms of Memorandum of Settlement of Disciplinary Action for Workmen dated 10.04.2002."

A plain reading of the charge by itself is sufficient to confirm that the petitioner has been dragged in to an absolutely unwarranted proceeding. Although the petitioner has not alleged malafide against his superiors but the impression gathered on reading of the chargesheet is that the petitioner has not only been unnecessarily subjected to an undue harassment rather faces a stigma of removal in consequence thereof. Perhaps, the disciplinary authorities need to address themselves as to the circumstances warranting a disciplinary proceeding for it is not for each and every act of irregularity that a disciplinary proceeding needs to be initiated rather until such time that the disciplinary authority satisfies himself that the act complained of indeed has the pre-requisites for a ‘misconduct’, such proceeding are uncalled for. Initiation of a disciplinary proceeding is certainly not a routine exercise nor can be used as a tool for venting displeasure towards any and every act of the subordinate employee.

Paragraph 5(j) of Memorandum of Settlement dated 10.4.2002 relied by the disciplinary authority to hold that the act of the petitioner so complained of would constitute a gross misconduct reads as under.

> “**5. By the expression “gross misconduct” shall be meant any of the following acts and omissions on the part of an employee:**
>
> …………………………………………………………..
>
> (j) doing any act prejudicial to the interest of the bank or gross indulgence or negligence involving or likely to involve the Bank in serous loss;
>
> ……………………… ………………………………”

A cursory glance of the expression “gross misconduct” as defined at paragraph 5 (j) would confirm that it is any such act which is found prejudicial to the interest of the Bank or amounts to gross negligence or by the negligent act the employee involves a Bank in serious loss, which would constitute a ‘gross misconduct’ and not every irregularity committed by the Bank employee.

Adverting to the charges in question individually, it is seen that Charge No.1 simply charges the petitioner of deliberately overdrawing beyond the limit of 3 lacs from his Current Account on 20 occasions rendering the account irregular and which continued for more than a year. The charge simply alleges the petitioner with irregularity of over withdrawal from his current account. It no where charges the petitioner of doing the act of overdrawing the money without sanction from the proper authority or by adopting dubious methods. In response to the said charge the petitioner has specifically mentioned in his defence brief at Annexure-4 that on each and every occasion the withdrawals were made with due permission of the Branch Manger or the Bank officers. This specific statement of the petitioner as present in his defence brief at Annexure-4 has been maintained by him at each level of the proceeding until the appellate authority yet neither the Bank chose to lead the Branch Manager of the Bank as evidence to confront the petitioner on his statement nor any other evidence was produced to demonstrate that the petitioner had overdrawn the money by adopting a wrongful procedure. It is perhaps appreciating this position that the Enquiry Officer even while accepting that the Branch Manager may allow such over withdrawal at his discretion, yet has chosen to uphold the charge simply because the overwithdrawal was permitted 21 times. There is no finding by the Enquiry Officer that the withdrawals were made without due permission or by adopting irregular means. On the other hand, the Bank never chose to examine the Branch Manager on the specific statement of the petitioner that the withdrawals were with his approval.

In my opinion, in absence of any evidence being led on this score, the very acceptance by the Enquiry Officer that the Branch Manager had the authority to allow such withdrawal, the charge was incapable of being upheld as it was resting on no evidence rather the action complained was explained in the answer of the petitioner, which was not found incorrect during the enquiry.

In so far as the charge no. 2 is concerned, it is the help taken by the petitioner from the proprietors of two firms who are said to be borrowers with the bank, which has been held to be in violation of the service condition.

Mr. Sinha has referred to chapter 19 of the award to submit that the at the infringement of the Rules of Conduct under paragraph 19.1 (iii) would amount to misconduct and that paragraph 5(i) of Annexure-19.2 which deals with the Rules of Conduct inter alia prohibits borrowing money from a person, firm or company dealing with the Bank. In my opinion neither the submission is capable of being upheld on literal interpretation nor any such act would come within the definition of gross misconduct. A plain reading of paragraph 1 (i) of Annexure-19.2 would show that an advice has been given to the employee of the Bank not to borrow any money amongst others, from any person, a firm or Company **dealing with the Bank**.

The word used in the clause is 'may' and is not preceded with 'shall' meaning thereby, the employee has been advised not to borrow money as far as possible from any such person, firm or company dealing with the Bank otherwise it would amount to misconduct. Now even if it is assumed that the petitioner should not have borrowed money from the borrowers with the Bank, such act has not been classified as a 'gross misconduct' in any of the clauses under paragraph 5 of the Memorandum of Settlement dated 10.4.2002 muchless at paragraph 5(j) thereof. The other aspect of the matter is that a mere irregularity in abiding with the disciplinary rules ipso facto does constitute a misconduct unless the consequences are disastrous or the action complained is backed with ulterior motive or has been done for unjust gains. The disciplinary rules in question provides that it is only such act of an employee which is classified as a 'gross misconduct' under the disciplinary rules which may invite an extreme penalty of dismissal and not any or every irregular act. The issue of misconduct has been a subject matter of discussion before the courts over the period of time and to demonstrate the complete fallacy in the reasoning attached by the disciplinary authority to uphold the action of the petitioner as an act of 'gross misconduct', I am tempted to refer to few of them.

The Supreme Court in a judgment reported in **(2007)4 SCC 566 (Inspector Prem Chand Vs. Govt. of NCT of Delhi & Others)** has discussed the issue of misconduct at paragraph 9 to 12 of the judgment which lends support to the opinion expressed by me.

> **"9.** Before adverting to the question involved in the matter, we may see what the term "misconduct" means.
>
> **10.** In *State of Punjab* v. *Ram Singh, Ex-Constable: (SCC* pp.57-58, para 5)
>
> "*5.* Misconduct has been defined in *Black's Law Dictionary*, 6th Edn. at p. 999, thus:
>
> 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.'
>
> Misconduct in office has been defined as:
>
> 'Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. 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.' "
>
> **11.** In *P. Ramanatha Aiyar's Law Lexicon*, 3rd Edn., at p. 3027, the term "misconduct" has been defined as under:
>
> "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."
>
> (See also *Bharat Petroleum Corpn. Ltd.* v. *T.K. Raju*[2].)
>
> **12.** It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation

> to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India* v. *J. Ahmed*[3] whereupon Mr Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)
>
> "*11*. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce* v. *Foster*[4]). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws* v. *London Chronicle* (*Indicator Newspapers*[5])]. This view was adopted in *Shardaprasad Onkarprasad Tiwari* v. *Divisional Supdt., Central Rly., Nagpur Division, Nagpur*[6] and *Satubha K. Vaghela* v. *Moosa Raza*[7]. The High Court 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*'."
>
> (emphasis supplied)

The Supreme Court in the case of **Union of India Vs. J. Ahmad** since reported in (**1979) 2 SCC 286** while taking note of the dictionary meaning of the word 'misconduct', 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 ……………………………………………………………… ………. 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.……………………………………………
> ………………………………………………………………
> ……………………………… 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."

The issue of misconduct again came for consideration in a judgment reported in **(2012) 4 SCC 407(Ravi Yashwant Bhoir vs. District Collector)** and the Supreme Court concluding on the issue at paragraph 13 and 18 of the judgment has held that the expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, any unlawful behaviour which is willful in character. The Court has held that the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs, taking into consideration the scope and object of the statute which is being construed. The Court has held that the act of misconduct is to be measured in terms of the nature of misconduct and should be viewed with consequences of such act as to whether it is detrimental to public interest.

The Courts are thus unanimous in their opinion that it is not the act simplicitor which determines the course of proceeding rather the act complained has to be considered in the backdrop of the statute under which it is tested and any irregularity noticed unless backed by ill motives which is willful in character, cannot ipso facto be categorized as a misconduct to invite a penalty.

It is now to be seen whether the charge leveled against the petitioner of borrowing money from the two borrowers of the Bank would amount to misconduct. In my opinion even if it is assumed for a moment that the petitioner should have refrained from taking help from his proprietor friends yet in absence of such act being construed as a 'gross misconduct' under paragraph 5 of the Memorandum of Settlement dated 10.4.2002, until such time that the bank would have been able to demonstrate during the course of enquiry with aid of evidence that such act of the petitioner has proved prejudicial to the Bank's interest or amounted to gross negligence or was likely to involve the Bank in serious loss, a mere error of judgment on the part of the petitioner in seeking help from his close friends who also happen to be borrowers with the bank, even if treated ipso facto an irregularity, cannot be held a gross misconduct in absence of any evidence supporting that the act was backed with ill motive or was done with ulterior motives.

Much reliance has been placed by Mr. Sinha on the Rules of Conduct present at paragraph 1(i) of Annexure-19.2 annexed vide Annexure-D to the supplementary counter affidavit to support the charge which inter alia prohibits an employee of the bank from borrowing money from amongst others, any person, firm or company **dealing with the bank**. The term **deal** and **dealer** has been defined in Black's Law Dictionary as follows:

> "**deal,** *n.* (15c) **1**. An act of buying and selling; the purchase and exchange of something for profit<a business deal>.**2.**An arrangement for mutual advantage<the witness accepted the prosecutor's deal to testify in exchange for immunity>. **3**. An indefinite quantity< a great deal of money>.
> **deal,** *vb*. (bef.12c) **1**. To distribute (something) <to deal drugs>.**2**. To transact business with (a person or entity)<to deal with the competitor>. **3**. To conspire with (a person or entity)< to deal for the account>.
> **dealer,** *n*.(17c) **1**. A person who purchases goods or property for sale to others; a retailer. **2**. A person or firm that buys and sells securities for its own account as a principal, and then sells to a customer. See DEAL."

The term 'dealing with the bank' as mentioned in the 'Rules of Conduct', has to be interpreted in context with which it has been used and cannot be given a literal interpretation to expand its operation.

A plain reading of paragraph (i) of Annexure-19.1 would show that an employee or any member of his family has been prohibited to borrow any money from a broker, a money lender or a subordinate employee of a bank or any person, a firm or a company dealing with the Bank. The provision eloquently while prohibiting an employee from borrowing money from any of the subordinate employee of the Bank also prohibits borrowings from others having business dealings with the Bank, be it a broker, a money lender a firm or a company. The reason is plain and simple and which is that a bank employee is not able to exert pressure on his subordinate for any pecuniary advantage as well as from those, having business dealings with the Bank, so that there is no scope of barter or a reciprocal action.

In my opinion until such time that by appropriate amendment an account holder with the bank, is included in the rules, to be covered under such prohibition, and consequently is also included in paragraph 5 of the Memorandum of Settlement dated 10.4.2002, the act cannot fall within the definition of a 'gross misconduct'.

This bring this Court to the third charge i.e of the alleged failure of the petitioner to disclose the source of deposit. In my opinion, the charge itself is thoroughly misconceived for it constitutes no charge. Firstly, no loanee is required to disclose the source of his deposit nor the rules mandates any such disclosure and secondly by production of receipt, the petitioner had done his bit. Now even if the receipt produced by the petitioner before the Enquiry Officer to support his claim that the money was generated by him by sale of the ornaments of his wife, was not acceptable to the Enquiry Officer, it made no difference to the situation because the petitioner in my opinion was not even required to disclose the source of deposit. In my opinion to hold enquiry on the source of such deposit, is beyond the scope of a disciplinary proceeding.

The case in hand, is a peculiar example of waste of precious time and public money, in holding an otherwise misconceived proceedings. The petitioner having done all that he could, to liquidate his loan, the bank instead of being satisfied by his act of liquidating the loan, has ventured to draw a disciplinary proceeding to hold him for gross misconduct warranting removal from service. In my opinion, neither, the charge is capable of being upheld on merits nor there is any evidence to support the charge of the respondents that the act of the petitioner in liquidating his loan either by himself or by taking help from his family and friends or his act of excess withdrawal, constituted a 'gross misconduct' to invite a disciplinary proceedings much less a punishment of removal.

As regarding the argument of Mr. Sinha on the limited scope of intervention in disciplinary proceeding as also on the issue that strict rules of evidence are not be followed in disciplinary proceeding although the legal position is well settled that the High Court in exercise of jurisdiction under article 226 of the Constitution of India, does not sit in appeal over the findings of a disciplinary authority to assume the role of an appellate authority but this does not mean that the High court is a mute spectator to a perversity in actions or is precluded from examining the materials which forms the basis of such decision.

Mr. Sinha is right that strict rules of evidence are not applicable in a disciplinary proceedings which is resting on the principles of preponderance of probability but then there has to be some evidence to connect the delinquent with the alleged charge and there has to be statutory prescriptions to confirm that the act of the petitioner would amount to 'gross misconduct', both of which elements are missing in the present case.

A somewhat similar issue came up for consideration before the supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank** reported in **(2009) 2 SCC 570** where a misconduct was held proved by production of an FIR. The opinion expressed at paragraph 14 of the judgment runs thus:

> "**14.** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by

> the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

While considering the issue whether a mere production of an F.I.R. could be treated as evidence to uphold a charge of misconduct in absence of any evidence standing up to prove the same, the Supreme Court held that it could not be treated as evidence. The legal position on the issue of evidence and its relevance, is well settled and even though the provision of Evidence Act may not be strictly applicable to a disciplinary proceeding but then there has to be some definite piece of evidence to connect the delinquent to the charge which is completely missing in the present case.

For the reasons and discussions above, the entire proceedings beginning with the charge memo at Annexure-3 the enquiry report at Annexure-6, the order of removal passed by the disciplinary authority at Annexure-10 together with the appellate order dated 15.10.2014 impugned at Annexure-14 are held illegal and dehors the statutory prescriptions and are accordingly quashed and set aside. The petitioner has been dragged into an unwarranted disciplinary proceeding and accordingly he is reinstated with full back wages and consequential benefits which should be provided to him within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed with the directions above and with much restraint on imposition of costs on the Bank.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.09.2017
Transmission Date	NA