

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1430 of 2013
IN
Civil Writ Jurisdiction Case No. 10295 of 2010**

- =====
1. Canara Bank Through Its Managing Director, Bangalore
 2. Executive Director, Canara Bank, Bangalore
 3. Deputy General Manager-Cum-Disciplinary Authority, Canara Bank, Circle Office, Patna
 4. General Manager, The Appellate Authority Canara Bank, Personal Wing, 112 Jc Road, Bangalore

.... Appellant/s

Versus

1. Kameshwar Singh Son Of Ram Janam Singh R/O Magadh Colony Road No.- 1 Chandrawati More, P.S.- Medical College Campus, District- Gaya

.... Respondent/s

with

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**Letters Patent Appeal No. 849 of 2013
IN
Civil Writ Jurisdiction Case No. 10295 of 2010**

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1. Kameshwar Singh S/O Ram Janam Singh R/O Magadh Colony, Road No. 1, Chandrawati More, P.S. Medical College Campus, Distt. Gaya

.... Appellant/s

Versus

1. Canara Bank Through Its Managing Director, Bangalore
2. Executive Director, Canara Bank, Bangalore
3. Deputy General Manager - Cum - Disciplinary Authority, Canara Bank, Circle Office, Patna
4. General Manager, The Appellant Authority, Canara Bank, Personal Wing, 112 Jc Road, Bangalore

.... Respondent/s

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Appearance :



(In LPA No.1430 of 2013)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In LPA No.849 of 2013)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-07-2017

Both these appeals filed by the employee concerned and the Bank. They assail validity of an order dated 18.6.2013 passed in C.W.J.C. No. 10295 of 2010 wherein the concerned employee Kameshwar Singh, working in Canara Bank, faced certain proceeding under the **Canara Bank Officers Employees (Disciplinary & Appeal) Regulation, 1976** resulting in imposition of a punishment of compulsory retirement passed on 18.8.2009 by the General Manager of the Bank. Even though, various grounds have been canvassed in the writ petition and issues have been discussed by the learned writ court in the order impugned. The only legal issue for consideration before us was as to whether the punishment in question could be imposed by the Appellate Authority and therefore, we propose to address this issue only.

Under the aforesaid regulation 1976, the disciplinary authority is defined under Regulation 3(g). This provision contemplates that, a *disciplinary authority means the authority*



specified in the schedule which is competent to impose on an officer or employee any of the penalties specified in regulation 4.

Admittedly, compulsory retirement is a punishment specified under Regulation 4(h). Further as per schedule to the regulation with regard to an officer, disciplinary authority is the Deputy General Manager of the Bank. Besides, Regulation 5 contemplates who has the “Authority to institute disciplinary proceedings and impose punishment”. The said provision reads as :-

(i) The Managing Director or any other authority empowered by him by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the bank.

(ii) The disciplinary Authority may himself institute disciplinary proceedings.

(iii) The Disciplinary Authority or any authority higher than it, may impose any of the penalties specified in regulation 4 on any officer employee.

Further there is a provision for appeal and review before the specified authority mentioned in schedule to the Discipline And Appeal Regulations by which, the appellate authority is notified as the General Manager of the Bank. Accordingly, it is clear that in



this case the concerned employee, Kameshwar Singh was visited with a punishment under Regulation 4(h) by the General Manager acting as Disciplinary Authority. The sole question is whether the power of disciplinary authority could be exercised by the appellate authority i.e. the General Manager. The learned writ court after taking note the rules has indicated that Regulation 5 (3), provides that the General Manager being an authority higher to disciplinary authority can exercise the power of a disciplinary authority and could pass the order of punishment and thus rejected the contention canvassed by the petitioner.

Learned counsel for the Bank also supported the aforesaid order and placed reliance on the regulations in question in this regard. Even though, learned writ court has given various reasons explaining the power available to the appellate authority for exercising the powers of a disciplinary authority.

But we find that that the legal issue in question has been considered in the case of **Secretary, Ministry of Defence and Others vs. Prabhash Chandra Mirdha**, reported in (2012) 11 SCC 565. After considering various judgments on the issue in question, Hon'ble Supreme Court in para 5 of the judgment held as under: -

“5. It is permissible for an authority, higher than the appointing authority to initiate the proceedings and impose



punishment, in the case he is not the appellate authority so that the delinquent may not lose the right of appeal.”

As the right of appeal cannot be taken away by a higher authority, and, therefore, if the higher authority, namely, the appellate authority acts as a disciplinary authority as in this case, then the right to appeal is taken away.

That being the legal position, and once the Hon’ble Supreme Court in the case of Secretary, Ministry of Defence (supra), has laid down the law to say that an Appellate Authority cannot exercise the power of a disciplinary authority and thereby deprive the appellant of the chance of appeal, we find that in this case the act of the Appellate Authority, namely the General Manager in exercising the power of the disciplinary authority is not permissible. It is contrary to the law laid down by the Hon’ble Supreme Court and as it has the effect of depriving the petitioner the right to appeal, it cannot be sustained.

Accordingly, we quash the order of punishment dated 18.8.2009 issued by the Appellate Authority, namely, the General Manager of the Bank and remand the matter back to the disciplinary authority, namely the Deputy General Manager, to proceed with the enquiry from the stage of receipt of enquiry report and thereafter conclude the proceedings in accordance with law within a period of



two months.

With the aforesaid, this appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

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