IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2082 of 2016

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Rabindra Nath, Son of Late Krishna Deo Pandit, resident of A- 9 Snehi Path, West Patel Nagar, P.O. & P.S.- Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The Chairman, Uttar Bihar Gramin Bank, Muzaffarpur.
2. The Director-cum-Appellate Authority, Uttar Bihar Gramin Bank, Muzaffarpur.
3. The General Manager, Uttar Bihar Gramin Bank, Muzaffarpur.
4. The Regional Manager, Uttar Bihar Gramin Bank, Siwan.
5. The Regional Manager, Uttar Bihar Gramin Bank, Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Ram Binod Singh, Adv.

For the Respondent/s : Mr. Prabhakar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-04-2017

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the memo of charge dated 3.5.2011 impugned at Annexure-13, the enquiry report dated 31.12.2012 impugned at Annexure-22, the order of removal passed by the Disciplinary Authority dated 12.5.2015 impugned at Annexure-25 together with the administrative order impugned at Annexure-26 and the appellate order confirming the punishment dated 10/12.11.2015 impugned at Annexure-28.

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

Facts of the case briefly stated is that the petitioner was appointed as a Branch Manager (Scale-I) at Rasulpur Branch (Saran) of the respondent Bank on 2.6.1983. The matter relates to the period when the petitioner was posted at the Bheldi branch of the Uttar Bihar Gramin Bank (hereinafter referred to as 'the Bank'), where the petitioner joined on 9.2.2005 and remained until January, 2011. The posting order is present at Annexure-1 and while the petitioner was asked to discharge the duties and responsibilities attached to the post of Branch Manager but he was not conferred with the powers to grant loan except loan against deposits. Certain instructions were issued by 'the Bank' as regarding sanction of loan which is present at Annexure-2 on 12.8.2005 and in so far as the petitioner is concerned, in partial modification of the earlier orders restraining him from sanctioning loans, the petitioner was permitted to sanction loan for S.K.C.C. and M.S.T.P. after getting approval from the headquarters on case to case basis.

That there was no complaint against the functioning of the petitioner as the Branch Manager of Bheldi Branch is manifest from the letter of appreciation issued under the signature of the Regional Manager dated 28.5.2007 present at Annexure-4 and the letter dated 21.4.2009 present at Annexure-7. It is considering the appreciated work of the petitioner that his financial powers were restored on 3.12.2009 vide order present at Annexure-8. For the reasons best known the financial powers which was restored with the petitioner were again seized under the orders of the Regional Manager dated 8.3.2010 present at Annexure-9. The petitioner, however, was allowed to grant loans against the deposits or deposit like L.I.C., K.V.P., N.S.C. etc. The position was reiterated in the letter dated 10.5.2010 at Annexure-10. While on one hand restrictions were issued, on the other hand by letter dated 21.9.2010 the petitioner was charged with not distributing loans to the satisfaction of the superiors. In fact the petitioner was cautioned against serious action if he failed to improve the situation.

Strangely while the Regional Manager was issuing orders restricting financial powers of the petitioner, alongside the petitioner was being charged with not making serious efforts in extending loans. In between the situation, the petitioner was promoted from Scale-I officer to Scale-II officer vide order passed by the Regional Manager dated 30.10.2010 present at Annexure-12 and was instructed to join at the Saharkola branch of the respondent Bank in the district of Siwan. A transfer order accompanies the promotion order which is dated 1.3.2011 and is a part of Annexure-12. Much after the promotion of the petitioner and his consequent posting at the Siwan Branch of the Bank that on 3.5.2011 he was served with a memorandum of charge listing 13 allegations against the petitioner, all related to grant of loans in contravention of the Rules and Regulations of the Branch, a copy of which is impugned at Annexure-13. Since the matter related to the period while the petitioner was posted as Scale-I Officer at Bheldi branch in the district of Saran, he sought permission for inspection of the documents vide Annexure-14 series and was permitted thus, by letter dated 3.6.2011. The petitioner demanded copies of the documents for preparing a purposeful reply vide Annexure-16 series but it is stated that he was not provided with the same. The petitioner pleading handicap, filed his reply, a copy of which is placed at Annexure-21 in which he has stated that although he has not been provided with the documents demanded but nonetheless, he would cooperate in the proceedings.

The Enquiry Officer submitted his report after holding enquiry, a copy of which is present at Annexure-22 upholding the charges. The petitioner was served with the copy of the enquiry report to which he filed his written submission present at Annexure-23 which exhaustively answers the allegation, on 15.1.2013 but was met with the punishment order of dismissal passed on 23.2.2013 vide Annexure-13 by the Chairman of the Uttar Bihar Gramin Bank and which was confirmed by the Board of Directors in appeal vide order passed on 4.3.2014.

The petitioner questioned the punishment order before this Court in CWJC No.8217 of 2014 and a Bench of this Court vide judgment and order passed on 29.1.2015 finding that the order of the Disciplinary Authority was not speaking and did not take into consideration the defence led by the petitioner, quashed the order of the Disciplinary Authority as well as the Appellate Authority and remitted the matter to the Disciplinary Authority for passing order afresh. A copy of the order of the Bench is present at Annexure-24. It is on remand of the matter that the Disciplinary Authority considered the matter and has passed the order impugned dated 12.5.2015 again upholding the charges and directing for removal of the petitioner from service which order has again been confirmed by the Appellate Authority vide order dated 10/12.11.2015 impugned at Annexure-28 and feeling aggrieved the petitioner is before this Court.

It is the argument of Mr. Bindhyachal Singh, learned counsel appearing for the petitioner that the allegations are based on no evidence and even though exhaustive explanation was advanced by the petitioner not only before the Enquiry Officer but also before the Disciplinary Authority to the allegations but neither the Enquiry Officer has considered the answers given by the petitioner nor the Disciplinary Authority has applied his mind on the explanation. He submits that although the matter was remitted by this Court requiring an application of mind by the Disciplinary Authority and the Appellate Authority on the explanation given by the petitioner to the allegations but the situation has remained the same and the removal order is simply based on allegation without appreciation of the explanation given by the petitioner. He submits that even when the Board themselves have promoted the petitioner from Scale-I to Scale-II in appreciation of his discharge of obligation as an officer in Scale-I and even though the tenure of the petitioner at Bheldi is supported by letters of appreciation present at Annexures 4 and 7, yet the petitioner has to face such dismissal.

It is the argument of learned counsel that the charge itself is vague for it does not relate to any period of default nor pinpoints the default rather sweeping allegation of reckless distribution of loan accounts, is the foundation thereof.

Learned counsel has referred to the charge memo present at Annexure-13 in support of his submission relating to vagueness of charge. He submits that a plain reading of the 13 charges levelled against the petitioner would show that the petitioner has been charged with recklessly disbursing loans by abuse of powers, contrary to the instructions issued by the head office and without obtaining approval from the head office. He submits that the other category relates to disbursement of loans to a single family and the third allegation is that this was done for pecuniary gains. He submits that the allegation is absolutely incorrect and has been exhaustively explained by the petitioner in his reply before the Enquiry Officer at Annexure-21. He submits that the petitioner has explained in detail that all the loans were in tune with the directives and on approval of the head office which was supported with documentary evidence viz. DE/1 to DE/6. He submits that the head office was well informed about the activities of the Bank through the monthly progress report in relation to the loans distributed over the period and never was any question raised on such distribution. It is submitted that the Charge nos.1, 2, 3, 6, 7, 8, 9, 10, 11 and 12 are identical and has been accordingly explained in the reply.

He submits that although sweepingly allegation has been made in reference to charge nos.1 and 7 that the disbursement was with mala-fide intention for pecuniary gains but no evidence either oral or documentary was led in support of such serious charge. It is submitted that while the petitioner has given a detailed explanation to the loans allegedly termed as recklessly disbursed, in so far as the charge of loans disbursed to a single family is concerned as present in charge nos.4 and 5, it has been appropriately explained by the petitioner that the loans were not to any individual but different business houses. He submits that even when the petitioner has explained that all these accounts were in the category of performing assets and were earning interest for the Bank but yet for the reasons best known the petitioner has been proceeded.

Learned counsel has next referred to the enquiry report to submit that there is absolutely no discussion on the explanation given by the petitioner to each of the charges and the Enquiry Officer has mechanically proceeded to uphold the charge by simply rejecting the evidence led by the petitioner and to side with the evidence led by the management without assigning any reasons for such rejection. It is submitted that the conclusion drawn by the Disciplinary Authority at Annexure-25 suffers from the same infirmity and though the Disciplinary Authority has taken note of the explanation of the petitioner but just as the default committed by the Enquiry Officer even the Disciplinary Authority has assigned no reasons to reject the explanation given by the petitioner. He submits that apart from the fact that the Disciplinary Authority has not bothered to deal with the explanation given by the petitioner, another fact which invalidates the conclusion drawn by the Disciplinary Authority is that he has allowed himself to be influenced by examining the past service records of the petitioner which was neither a subject matter of enquiry nor a piece of evidence led. It is submitted that the order of removal is not an outcome of an independent exercise rather the view of the Disciplinary Authority stands influenced on extraneous consideration which were not a part of the enquiry.

It is summing up his argument that learned counsel submits that even though the enquiry is founded on the special audit report but the copy of the same was never provided to the petitioner despite his request and which is apparent from Annexure-19 which is the minutes of the proceeding recorded by the Enquiry Officer more particularly at running page 101 where the statement of the defence representative regarding non-supply of documents stands noted and the reply of the Bank representative is present at running page 102 where he has stated that the special audit report is neither necessary to be produced nor can be made available. It is thus the submission of Mr. Bindhyachal Singh, learned counsel appearing for the petitioner that where the documents which went to root of the matter were not provided, the proceedings stands infracted.

Learned counsel in support of his submission on the perversity on the enquiry report has relied upon the judgments of the Supreme Court reported in **(2009) 2 SCC 570 (Roop Singh**

Negi vs. Punjab National Bank) and **(2015) 12 SCC 408 H.L. Gulati vs. Union of India**).

Learned counsel in support of his submission that the service records could not have been relied upon by the Disciplinary Authority to draw his conclusion has relied upon a judgment of the Supreme Court reported in **(2010)11 SCC 278 (Indu Bhushan Dwivedi vs. State of Jharkhand)** more particularly paragraphs 22, 23 and 28 in which the Supreme Court has held that whatever the material which the Disciplinary Authority thinks proper to rely upon, should be brought to the notice of the delinquent employee and he cannot consider his past service record without giving him an opportunity to explain.

Learned counsel in support of his submission that in absence of any evidence led that the loans advanced were maliciously for obtaining pecuniary gains, the charge of reckless disbursement of loans by the petitioner even if taken on its face value, would at best can be termed a negligent attitude in not following the prescribed procedure but in no circumstance can be termed a misconduct to invite an extreme penalty of dismissal, has relied upon the following judgments:

(1) **(2007) 4 SCC 566 (Inspector Prem Chand vs. Govt. of NCT of Delhi).**

(2) **(2008) 17 SCC 684 (KSRTC vs. T. Shree Ram Reddy).**

(3) **(2012) 4 SCC 407 (Ravi Yashwant Bhor Vs. District Collector, Raigad).**

(4) **2014 (3) PLJR 229 (Anil Kumar Singh vs. The Multi-State Co-operative Land Development Bank Ltd.).**

Per Contra Mr. Jha, learned counsel appearing on behalf of the Bank has supported the impugned action by submitting that since the petitioner was found guilty of large scale irregularities in the matter of extending loans which may have transpired after the promotion of the petitioner but nonetheless if the same would amount to misconduct of grave nature then the petitioner would have to face the music. He submits that the matter has been considered by the Disciplinary Authority threadbare and since in the opinion of the Disciplinary Authority the charges constituted misconduct of grave nature that the order of removal has been passed and which view finds support from the Appellate Authority.

Mr. Jha while arguing on the limitations to interference in matters arising from disciplinary proceedings, has submitted that in absence of any procedural infirmity in the proceeding coupled with the fact that the petitioner has been granted full opportunity to defend his case whereafter the Enquiry Officer has submitted his report upholding the charges which has persuaded the Disciplinary Authority to concur therewith and impose the penalty of removal, this Court may not interfere with the findings simply because a second view would be possible.

It is submitted that although argument has been made as regarding non-supply of documents but Annexures 15 and 18 to the writ petition itself is an evidence that full opportunity was given to the petitioner for inspection. It is argued that the special audit report even though was a relevant factor in initiation of the departmental proceeding but that alone is not the foundation rather it is on discovery of the large scale irregularities in the matter of disbursement of loans which has persuaded the Disciplinary Authority to initiate proceedings and since despite reasonable opportunity being granted, the petitioner has failed to give a reasonable explanation to the default, that it is considering the seriousness of the charge that the dismissal order has been passed.

Learned counsel has relied upon the judgment of the Supreme Court since reported in **(1997) 4 SCC 565 (Tara Chand Vyas Vs. Chairman and Disciplinary Authority)** to submit that the Supreme Court has observed that the disciplinary measures should be aimed to eradicate corrupt conduct on the part of the employee/officers in public office including those in banks. It is submitted that the charge memo itself is self explanatory as to the charges facing the petitioner and in which view of the matter the order impugned would require no interference.

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

Although the charge memo imputes 13 charges against the petitioner as manifest from Annexure-13 but substantially it relates to three primary charges and i.e.:

(a) Reckless disbursement of loans contrary to the instructions of the head office and without seeking approval thus detrimental to bank interest. This allegation would cover all the charges except charge nos.4 and 5;

(b) disbursement of multiple loans to single family which would cover charge nos.4 and 5; and

(c) disbursing the loans with mala-fide intention for obtaining pecuniary gains which would cover charge nos. 1 and 7.

Of the nature of allegation so described above while the nature of allegation at item nos. (a) and (b) would definitely reflect a procedural lapse on the part of the petitioner, if found true, but unless and until such time that such nature of default is accompanied with the allegation present at item no.(c) or led to disastrous results, it would be a debatable proposition whether or not such nature of default can be termed as a grave misconduct to invite such a proceeding.

A plain reading of the charges set up against the petitioner at Annexure-13 would confirm that it is only charge nos.1 and 7 which alleges that the procedural default in disbursement of loans was committed by the petitioner maliciously, for pecuniary gains. The charge of doing an official act with an object of pecuniary gains, is a rather serious charge but it is very surprising that no evidence of any kind was led during the proceedings to support the charge that the petitioner has disbursed loans for obtaining pecuniary gains. The charge is thus without evidence.

It is rightly argued by Mr. Jha, learned counsel appearing for the Bank that there should be 'Zero' tolerance in respect of corrupt bank officials because they are repository of a public trust and deal with public deposits but then the allegation of such grave nature has to be founded on some kind of evidence and should not remain a paper transaction.

The sequence of events discussed above would show that the earlier exercise carried out by the Bank culminating in the order of dismissal was interfered with by this Court when the writ petition filed by the petitioner bearing CWJC No.8217 of 2014 was allowed vide judgment and order dated 29.1.2015 present at Annexure-24 primarily on grounds that the punishment order lacked application of mind. I am sorry to observe that despite the advice tendered by this Court, the Disciplinary Authority having been put to notice as to the nature of discharge expected of yet, it has borne no fruitful results. The non-application of mind as to the matter can be gathered from the opinion of the Disciplinary Authority when he proceeds to impose different penalty for the different charges although all of them are practically the same and overlapping except in so far as the charge nos.1 and 7 are concerned, both of which while charging the petitioner of procedural default, are also attended with allegation of obtaining pecuniary gains therefrom. Now while the Disciplinary Authority has accorded a punishment of removal from service in respect of charge no.1, for the reasons best known to him, he imposes a penalty of reduction in the initial stage of salary in respect of charge no.7 even though both the charges impute the petitioner of carrying a mala-fide intention for deriving pecuniary gains while disbursing the said loans. Such is the application of mind by the Disciplinary Authority to the whole issue.

As I have already indicated that there is absolute absence of evidence to support the allegation of pecuniary gains derived by the petitioner in disbursement of loans and thus the gravest of the charge is without any evidence nor any attempt has been made by the bank to drive home the charge nor there is any finding either by the Enquiry Officer or the Disciplinary Authority and thus the charge of obtaining pecuniary gains, in view of the law settled by the Constitution Bench of the Supreme Court in the **Union of India vs. H.C. Goel reported in AIR1964 SC 364** more particularly paragraphs 23 and 27 thereof, is held 'based on no evidence' and thus incapable of being upheld.

This would take this Court to the remaining allegations forming the 13 charges and all of which simply charge the petitioner of disbursing loans contrary to the instruction, without seeking approval of the head office and thus being detrimental to the bank interest.

Mr. Bindhyachal Singh, learned counsel appearing for the petitioner has rightly argued that the period of default is missing rather simply the bank while alleging such default on the part of the petitioner has given list of accounts and since the tenure of the petitioner at the Bheldi branch was during the period 2005-2010 it would be presumably during the said period.

The allegations at charge nos.1 to 13 have charged the petitioner with abuse of powers in disbursement of loans recklessly and without getting approval from the head office. In other words, the petitioner is being charged with procedural lapse on his part. Although charge nos.1 and 7 do also accompany a charge of deriving pecuniary gains but I have already held that since no evidence was led by the department on the charge of deriving pecuniary gains by the petitioner in disbursement of loans, charge nos. 1 and 7 have to fail on this ground.

Now as regarding the charge of reckless disbursement of loans is concerned, it is the own acceptance by the Disciplinary Authority while framing the charge that the Regional Office has show caused the petitioner on this alleged default, seeking his explanation vide letter No.6200 dated 16.10.2008 which relevant piece of information is present at charge no.1. In other words, the petitioner had been put to notice for the alleged reckless disbursement of loans vide notice dated 16.10.2008 seeking his explanation thereon. This relevant piece of information also confirms that the disbursement of loans by the petitioner was to the full information of the Bank. The petitioner in response to charge no.1 has specifically mentioned that he had filed his explanation on 8.11.2008 which has been marked Exhibit ME/7. This single instance would demonstrate that the issue of alleged reckless disbursement of loans was well within the notice of the Bank and for which the petitioner was put on notice and explanation received and the matter did not progress thereafter.

In fact even during this period that letter of appreciation was received by the petitioner vide Annexure-4 which is a letter of the Regional Manager dated 28.5.2007 appreciating the good work of the petitioner and is followed by another letter dated 21.4.2009 on the same issue encouraging the petitioner to carry on his good work. These two relevant piece of documents both of which relate to the period in question, would itself reflect a strange situation where on the one hand the Regional Manager of the Bank was appreciating the good work of the petitioner and has applauded his initiative encouraging him to reach the target even further and on the other hand for the same act the petitioner is being made to face a disciplinary proceeding on the allegation of reckless disbursement of loans and contrary to the bank's interest. Again no evidence has been led as to how the disbursement was detrimental to bank's interest.

Apart from the fact that the petitioner has exhaustively repelled the allegations by giving individual details of the loan accounts with specific note that each of these accounts were drawing interest for the bank and were performing assets but the exhaustive answer given by the petitioner in reference to DE/1 to DE/6 though noted, whereas the Enquiry Officer has submitted a shoddy report mechanically upholding the charge and did not bother to consider the explanation of the petitioner, even the Disciplinary Authority whose exercise is a shade better inasmuch as he has taken note of the defence of the petitioner and has also proceeded to give his opinion but again in the process the Disciplinary Authority gives no reasons for rejecting the explanation given by the petitioner and to uphold the charge.

In my opinion, the charge of reckless disbursement of loans by the petitioner contrary to the departmental instructions, without approval of the head office and in detriment to the bank interest is not sustainable for the following reasons:

(a) The issue having been raked up as back as in 2008 by the issuance of show cause notice bearing no.6200 dated 16.10.2008 which was duly replied by the petitioner and which explanation was apparently accepted because it was followed by issuance of letters of appreciation and encouragement present at Annexures 4 and 7, the same very issue cannot again be raked up for a second round disciplinary proceeding on the same set of charges, on a change of opinion. Reference in this regard is made to the following judgments:

(1) **(1972) 4 SCC 386 = (1971) 82 ITR 831(Bankipur Club Ltd. Vs. Commissioner of Income Tax, Bihar & Orissa).**

(2) **AIR 1975 SC 703 (Income-tax Officer, Hyderabad vs. Barkat Ali).**

(3) **1984 PLJR 584: 1984 BBCJ 636 (Bhimraj Madan Lal vs. State of Bihar) (F.B.).**

(b) It has been argued by Mr. Bindhyachal Singh, learned counsel appearing for the petitioner and also accepted by Mr. Jha, learned counsel for the Bank although with some reservations that the proceedings in question takes its root on the special audit report submitted by the audit team raising objections on the disbursement of loans. In my opinion, even if there were objections raised by the special audit team on the disbursement of loans by the petitioner during his tenure at Bheldi Branch, the bank was not to follow it mechanically rather should have applied its mind whether at all the objections require an enquiry. As has been demonstrated by the petitioner practically all the accounts in question were in the nature of performing assets giving profit to the bank and this relevant piece of defence has not been dealt with either by the Enquiry Officer or the Disciplinary Authority or the Appellate Authority while sweepingly rejecting the explanation to uphold the charge. Reference is made to a judgment of the Supreme Court reported in:

(i) **AIR 1979 SC 1960 (I. & E. Newspapers Society Vs. I.T. Commissioner, New Delhi).**

(ii) **2003(4) PLJR (SC) 231 (State of Bihar vs. Industrial Corporation Pvt. Ltd.)** more particularly at paragraph 18 which runs as follows:

> "18. The Statutory Authorities also could not have sought to levy penalty relying on or on the basis of the audit report only. They were required to apply their own independent mind for the purpose of finding out as to whether the respondents in law had committed any breach of the terms and conditions of licence of the provisions of 1947 or 1915 Acts so as to make them liable for levy of penalty. The concerned authorities acting in terms of the statutory provisions, therefore, without any further investigation could not have acted mechanically on the audit report."

(c) The allegation of reckless disbursement of loans contrary to the instructions and detrimental to the bank interest may reflect a procedural lapse on the part of the petitioner and although it is the specific stand of the petitioner as confirmed from his reply present at Annexure-21 that each of such loan accounts were opened after due approval and sanction of the head office and which explanation of the petitioner also stands confirmed by the letters of appreciation at Annexures 4 and 7 but even if the allegation is to be taken on its face value, in my opinion, every negligent act or a procedural lapse which may reflect an error of judgment cannot be construed a misconduct unless the results are disastrous and the object is malicious. Both the exceptions are missing in the present case for neither there is any evidence to support the allegation of mala-fide against the petitioner or to support the allegation of pecuniary gains nor there is any evidence to support that the action gave disastrous results. The judgments relied upon by Mr. Bindhyachal Singh are quite exhaustive on the issue but for the sake of convenience I am tempted to record the expression of the Supreme Court on the issue as found in the judgment of the **Union of India vs. J. Ahmed since reported in (1979) 2 SCC 286**:

> "**9.** … …. …. …. …. …. 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. … … … … … … … …. …. …. … …"
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> 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 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. … … … … …. …. ”

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. ………."

(d) The orders impugned are perverse because even though it takes partial note of the defence set up by the petitioner but while upholding the charge, the order impugned does not assign any reasons for rejecting the explanation given by the petitioner. While the report of the Enquiry Officer at Annexure-22 is extremely shoddy for it neither takes notice of the exhaustive explanation of the petitioner nor assigns any reasons for the conclusion, the order of the Disciplinary Authority as affirmed by the Appellate Authority at Annexures 25 and 28 though partially notice the stand of the petitioner but neither appreciates the defence set up by the petitioner nor appreciates the all relevant aspect that a similar notice in this regard on 16.10.2008 was not pursued after explanation of the petitioner nor rejects the stand of the petitioner that all the accounts were after due notice and approval but mechanically proceeds to uphold the charge simply relying on the earlier letters without bothering to satisfy himself that in between the financial powers of the petitioner was restored on 12.8.2005 and 30.9.2005 as well that the petitioner derived appreciation on 28.5.2007 and 21.4.2009 vide Annexures 4 and 7 and also got promotion on 30.10.2010 vide Annexure-12.

What transpires from the records of the proceedings is that the whole proceeding has been conducted mechanically simply to satisfy the special audit team on their objection even in absence of materials supporting the charge.

For the reasons and discussions aforementioned the entire proceedings culminating in the order of punishment impugned at Anenxure-25 and 26 as well as the appellate order impugned at Annexure-28 are unsustainable in law as well as on facts and are accordingly quashed and set aside.

The writ petition is allowed. The writ petitioner stands reinstated with all consequential benefits.

No order as to costs.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11-04-2017
Transmission Date	NA