IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1555 of 2015
In
Civil Writ Jurisdiction Case No.2573 of 2015

Shibatosh Dutta Son of Bhabatosh Dutta resident of Bahadurpur, Ward No. 29, near Madhuri Chowk, P.S. Samastipur, town and District Samastipur

... ... Appellant/s

Versus

1. The Uttar Bihar Gramin Bank through its Board of Directors, Head Office at Kalam Bagh, P.O. + P.S. Muzaffarpur, District - Muzaffarpur
2. The General Manager, The Uttar Bihar Gramin Bank, Head office at Kalam Bagh, P.O. + P.S. Muzaffarpur, District - Muzaffarpur
3. Sri B.S. Hari Lal, Disclinary Authority, The Uttar Bihar Gramin Bank at Kalam Bagh, P.O. + P.S. Muzaffarpur, District - Muzaffarpur
4. The Ram Yatan Sharma, Enquiring Authority The Uttar Bihar Gramin Bank, Chakosan Branch, Hajipur, District - Vaishali

... ... Respondent/s

Appearance :
For the Appellant/s : Mr. A.B.Ojha, Sr. Advocate
Mr. Nitesh Kumar
For the Bank Mr. Prabhakar Jha
Mr. Mukund Mohan Jha

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 06-03-2018

The writ petitioner is appellant before this Court feeling aggrieved by a judgment and order dated 13.02.2015, passed by the learned Single Judge of this Court in CWJC No. 2573 of 2015, whereby the writ petition has been dismissed.

2. The facts of the case lie in a very narrow compass. The petitioner, an employee of the respondent-Bank, while posted as Branch Manager at Ramdauli Branch of Uttar Bihar

Gramin Bank, was proceeded against by service of a charge memo, *inter alia*, for disbursement of loan of Rs.49,400/- to a person other than the account holder. The amount in two instalments of Rs. 10,000/- and 39,400/- was disbursed on 13.09.2010 and 24.09.2010 under the Kisan Credit Card. The petitioner responded to the charge memo, a copy of which is at Annexure-3 to the writ petition, and while admitting to the disbursement of the loan to a person other than the account holder, he undertook to make good the loss. The inquiry was held upholding the charge which has resulted in punishment order dated 15.05.2014 impugned at Annexure-4 to the writ petition which has been upheld by the appellate authority on 01.10.2014 impugned at Annexure-6. Feeling aggrieved thereby, the appellant as petitioner moved this Court through the writ petition which has been dismissed, *inter alia,* taking note of the nature of obligation cast upon a Bank employee as also the undisputed admission of the appellant-petitioner of disbursing the loan in question to a person other than the account holder.

3. We have heard Mr. A.B. Ojha, learned Senior Counsel, appearing for the appellant-petitioner and Mr. Prabhakar Jha, learned counsel, appearing for the Uttar Bihar Gramin Bank and we have perused the records.

4. Annexure-3 to the writ petition is the response of the petitioner to the charges and leaves nothing for speculation. The petitioner-appellant has admitted that the person to whom the loan had been disbursed is not the account holder, rather is some one else in village and who has gone missing. He justifies the default by stating that in the nature of duty discharged by a Branch Manager, such kind of unintended omission does take place. After admitting to the financial mess, he undertook to reimburse the loss suffered by the Bank. Although a number of issues have been raised by the appellant as to the procedure followed by the Bank in the backdrop of the facts accompanied and has also questioned the opinion expressed by the learned Single Judge, but we are of the considered opinion, that in the nature of the misconduct faced by the petitioner as well considering his status as a Branch Manager of a Rural Bank, such financial irregularity cannot be held a *bona fide* mistake nor an undertaking of reimbursement would reduce the nature of misconduct.

5. Mr. Jha, learned counsel for the Respondent-Bank has produced a copy of Uttar Bihar Gramin Bank Officer & Employees Service Regulation, 2010 to inform that the service conditions of the employee of the rural bank are guided by the

said Regulation and the 3rd proviso to Regulation 39 provides that no inquiry, *inter alia*, be made if "the officer makes a voluntary admission of his guilt in his reply to the show cause notice'". In our opinion, in the nature of response given by the appellant-petitioner present at Annexure-3 to the writ petition, the admission to the guilt itself was sufficient for the purpose of imposition of penalty on the appellant-petitioner in view of stipulation present at the 3rd proviso to Regulation 39 which deals with the penalty to be imposed on a bank employee suffering misconduct. That the Bank gave opportunity to the petitioner to demonstrate his innocence, is a confirmation of transparency in the disciplinary proceeding and cannot cause any prejudice to the appellant-petitioner. The bank employees have been held to be the repository of trust of the account holders and even a slightest mistake by such custodian is unpardonable.

6. Reference in this regard is made to a judgment of the Supreme Court in case of **Regional Manager, U.P. SRTC,Etawah & Ors. vs. Moti Lal & Anr.** reported in **(2003) 3 SCC 605** (para 10), wherein it is held that where an employee deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of

integrity and trustworthiness is a must and unexceptionable. The opinion expressed by the learned Single Judge on the nature of the duty discharged and the integrity expected of a bank employee, in reference of the judgments on the issue, is exhaustive and we are persuaded to make reference thereto:

> "Reference in this connection may usefully be made of the judgment of the Apex Court in the case of Chairman and Managing Director, United Commercial Bank and Others vs. P.C. Kakkar, reported in (2003)4 SCC 364, wherein the Apex Court following its earlier judgment in the case of **Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik**, reported in **(1996) 6 SCC 69,** had held as follows:
>
> > "14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with 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, reported in (1996) 6 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."

10. The aforesaid view of the Apex Court has been followed without exception laying down a clear law that in case of misconduct against a Bank Officer involving his integrity the matter should not be treated lightly and/or leniently by the courts. In the case of **Ganesh Santa Ram Sirur vs. State Bank of India and Anr.**, reported in **(2005)1 SCC 13**, it was held as follows:

> "34. The Bank Manager/Officer and employees of any Bank, nationalised/or non-nationalised, are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule

34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC vs. Hoti Lal reported in 2003(3) SCC 605. Wherein this Court has held as under (SCC p.614, Para 10):-

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

11. Yet again in the case of **Canara Bank Vs. V.K. Awasthy** reported in **(2005)6 SCC 321**, the same view was reiterated and so was done also by the Apex Court in the case of **State Bank of India & Anr. vs. Bela Bagchi and Others**, reported in **(2005)7 SCC 435**, wherein the law in this regard was laid down in the following words:

> "15. A Bank officer is required to exercise higher standards of honesty and

integrity. He deals with 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, reported in (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 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 charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance".

12. In the case of **Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain**, reported in **(2005)10 SCC 84**, while dealing with the case of disciplinary proceedings and punishment against a Bank Officer the Apex Court had again followed the same principle.

13. There would be infact no need to multiply the authorities on the subject, inasmuch as the same principle was consistently followed again by the Apex Court in the case of **State Bank of India & ors. vs. Ramesh Dinkar Punde**, reported in **(2006)7 SCC 212** and also in the case

of **State Bank of India & ors. vs. S.N.Goyal**, reported in **(2008)8 SCC 92**, wherein while rejecting the plea of a lesser punishment in relation to similar misconduct of a Bank Officer involving misappropriation/embezzlement of fund it was held as follows:

> "41. At the relevant point of time the respondent was functioning as a Branch Manager. A Bank survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."

14. In the case of **General Manager (P), Punjab & Sind Bank and Others vs. Daya Singh**, reported in **(2010)11 SCC 233**, the role of Bank Manager in exercise of his official function and exercising his power with honesty and integrity was summed up in the following terms:

> "26. In a number of cases including State Bank of India vs. Bela Bagchi, reported in (2005) 7 SCC 435, this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is

concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner.

27. In Damoh Panna Sagar Rural Regional Bank's case, reported in (2005) 10 SCC 84, the Manager of a Bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorized withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. Inspite of a well reasoned order by the Inquiry Officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments."

15. In view of the aforesaid view/settled authorities of the Apex Court the plea of the petitioner that he is ready to refund the embezzlement amount for recalling/ reviewing the order of punishment of his dismissal from service must be and is hereby rejected. As a matter of fact a similar plea of bestowing sympathy and generosity in the matter of misappropriation/ embezzlement of the Government fund was

rejected by the Apex Court in the case of **T.N.C.S. Corporation Ltd. vs. K. Meerabai**, reported in **(2006)2 SCC 235**, wherein it was held as follows:

> "29. Mr. Francis also submitted that a sum of Rs. 34,436.85 being 5% of the total loss of Rs. 6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money mis-appropriated. In the instant case, respondent employee is found guilty of mis-appropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or mis-placed sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment awarded by the disciplinary and Appellate Authority."

7. The case of the appellant is concluded by his own admission of the misconduct and for the reasons discussed, we are not persuaded to grant indulgence to the issues raised in the appeal which is devoid of merit and is accordingly dismissed

but with no any order as to costs.

(Jyoti Saran, J.)

(Chakradhari Sharan Singh, J.)

HR/-

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