

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14344 of 2009

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M. Anwar Asghar, son of late M. Asghar Nawab, resident of 226B Ist Floor, Gali No.7, New Jain Mandir, J. Extension laxminagar, P.S. Laxminagar, Delhi 110092

.... Petitioner/s

Versus

1. Industrial Development Bank Of India Ltd. (Idbi) Kashi Palace Branch, Dak Bunglow Road. Patna -1 Through Branch Head
2. K. Ramaswami, Head Branch, Business And Disciplinary Authority Having Registered Office I.D.B.I. Tower, W.T.C. Complex, Cuffe Parade, Mumbai-400005
3. B.P. Singh, Executive Director , Corporate Centre, Idbi Bank Ltd. I.Db.I. Tower, W.T.C Complex , Cuffe Parade , Mumbai
4. R. Vasudevan Presenting Officer- Cum- A.G.M. I.Db.I. Tower, W.T.C Complex , Cuffe Parade , Mumbai
5. Yashpal Gupta , Deputy General Manager, Ssd, I.Db.I. Tower, W.T.C Complex , Cuffe Parade , Mumbai
6. C.S. Jain , Appellate Authority- Head Personnel Banking Group, I.D.B.I Bank ,I.Db.I. Tower, W.T.C Complex , Cuffe Parade , Mumbai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar,
Ms. Minu Kumari
For the Respondent/s : Mr. Chitranjan Sinha, Sr. Advocate.
Mr. Siddharth Prasad
Mr. Surya Nilambari

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-03-2018

Heard learned counsel for the petitioner and learned counsel for the respondents.

The father of petitioner was discharging the duty of Customers Sales and Service Manager in Industrial Development Bank of India (for brevity IDBI) was the over all incharge of clearing section of the Bank and it is he who was



handling whenever cheques came to the Bank for clearance. Allegation has been made against the petitioner that while discharging the duty as Customer Sales and Service Manager in Bank's Kashi Place Branch, from August 2003 to June 2005 he accommodated clearance a cheque bearing no. 238239 for Rs.25 lacs in current Account No.065102000014863 of M/S Patliputra Builders, Pvt. whereas the account was showing balance amount of Rs.43,814/-. Instead of returning the said cheque to the presenting Bank, the petitioner debited the amount to "Inward Clearance Reject Account" where balance remained outstanding till 25.4.2005 in violation of code and conduct and banking norms. The amount was recovered only after it was specifically pointed out by the Controlling Officer and that money remained unpaid for 17 days causes loss to the Bank of interest earning, that led to issuance of charge sheet to the petitioner dated 12.4.2006 (Annexure-9), in turn the father of petitioner submitted his reply wherein he has not denied the allegation made against him that the cheque was placed before him for clearance to the said cheque and cleared the cheque in favour of M/S Patliputra Builders Pvt. but he had taken a plea that he had done on the instruction of Sri Sanjay Jha the Branch Head. In his



explanation he stated that over all incharge of the branch was Branch Head. He could not refuse to obey his order otherwise it would create indiscipline in the branch, and also in order to avoid the wrath of Branch Head. Further he has taken a plea that the customer was very influential person and having good liasoning with the Branch Head as well as he was apprehending body harm at his head. In his explanation he has further said that he was under subordinate of the Branch Head and he could not have forced him to stop as he wanted to do some thing in his own way. He has further taken a plea that he was never satisfied with the impugned transaction but said he had done on the duress and in good faith he had never misused his position and power in performance of official duties and in excess of power/discretion conferred on him and thereby causing loss of interest earning to the Bank. His explanation was considered and it was decided a full-fledged enquiry wherein the petitioner had participated in the enquiry. The Enquiry Officer submitted his report and copy of the same was served upon him whereupon he was called upon to give his explanation, if so like, and the original petitioner had submitted his explanation-cum-representation dated 30.9.2008 (Annexure-F to the counter



affidavit) and whereafter the disciplinary authority passed the penalty order dated 20th October, 2008.

Being aggrieved by the order of the Disciplinary Authority the petitioner filed an appeal as the appeal has remained pending for a long period which compelled the petitioner to approach this Court vide C.W.J.C. No.4780 of 2009 which was disposed of vide order dated 22.5.2009 with a direction to the appellate authority to dispose of the appeal of the petitioner within three months from the date of production of the order and whereafter the Appellate Authority passed the order in detail, dealing with all aspect of the matter and did not find favour which has been taken by the petitioner and that order has been affirmed by the Revisional Authority.

Learned counsel for the petitioner has basically placed three points, first he had acted at the behest of Mr. Sanjay Jha, Branch Head, second point is that he was not supplied the necessary document and third he has been raised of not allowed to examine the defence witness.

Learned counsel for the Bank has drawn the attention of this Court that the plea which has been taken by the petitioner is not sustainable as it appears from the order of penalty, wherein



it has been mentioned that all the documents as per the letter dated 10.5.2006 were supplied to the petitioner, so plea that has been taken by the petitioner that documents were not supplied is not correct plea and as such not sustainable in law, in view of the fact that all documents were supplied as per his desire. Further learned counsel for the Bank has pointed in paragraph 7 of the penalty order the disciplinary authority has mentioned that he was given reasonable and adequate opportunity to defend his case and further said that he had on his own volition refused to take the assistance of defence assistant and did not present any defence witness/documents in support of his claim.

In such view of the matter, when the original petitioner himself has refused to bring the document and defence witness, the question of not allowing the witness to be examined does not arise. If father of petitioner wanted to examine some defence witness he should have filed a proper application calling certain persons to whom he wanted to examine and if the Bank had refused to examine the witness then it can be said that prejudice has been caused to him but in contra from the order of the Disciplinary Authority it appears that he himself has not produced the defence witness nor document as well as the



document which was called by him was supplied to him. Further fact is that as he had taken a plea that he had acted at the behest of Branch Head i.e. Mr. Sanjay Jha it has been informed that Mr. Sanjay Jha has himself faced the enquiry and his services was also dismissed on account of this transaction. So question of discrimination does not arise against him as well as Mr. Jha has also faced appropriate consequences for the act of his mis-demnor. The officials of the Bank are trustee of public money and they are supposed to ensure that money should be misused. The action further shows his misadventure and serious lapse as well as shows recklessly handling publis money which caused loss to the Bank.

Reliance can be place on the judgment of the Hon'ble Supreme Court in the case of Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, (2003)4 SCC 364 , State Bank of India and another v. Bela Bagchi and others, (2005) 7 SCC 435 and Disciplinary Authority-cum-Regional Manager and others v. Nikunja Bihari Patnaik, (1996)9 SCC 69 in paragraph 7 of the judgment wherein the Court has specifically held that loss or no loss to the Bank, does not play any role in the matter of acting beyond the authority or violating



rule and regulation he will be liable for disciplinary action.
There is no material to point out procedural irregularity in conducting the enquiry.

In view of the aforesaid discussion, this Court does not find any merit in this writ petition. Accordingly the same is dismissed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
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