IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6898 of 2002

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DHRUB NARAYAN JHA SON OF LATE BINDESHWAR JHA, RESIDENT OF VILLAGE-SIBBIPATTI, P.S. RAJNAGAR, DISTRICT MADHUBANI.

... ... Petitioner/s

Versus

1.MADHUBANI KSHETRIYA GRAMIN BANK THROUGH ITS CHAIRMAN, PARISHAD BAZAR (MADHUBANI), P.S. MADHUBANI SADAR, DISTRICT MADHUBANI.

2.THE BOARD OF DIRECTOR (APPELLATE AUTHORITY) MADHUBANI KSHETRIYA GRAMIN BANK, PARISHAD BAZAR (MADHUBANI), P.S. MADHUBANI SADAR, DISTRICT MADHUBANI.

3.THE CHAIRMAN, PARISHAD BAZAR (MADHUBANI), P.S. MADHUBANI SADAR, DISTRICT MADHUBANI.

4.THE DISCIPLINARY AUTHORITY, PARISHAD BAZAR (MADHUBANI), P.S. MADHUBANI SADAR, DISTRICT MADHUBANI.

5.MADHUBANI KSHETRIYA GRAMIN BANK, RAGHOPUR BARAHA BRANCH THROUGH ITS BRANCH MANAGER, P.S. BISFI(PATRUNA), DISTRICT MADHUBANI.

... ... Respondent/s

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Appearance :

For the Petitioner/s :Mr. Kaushal Kumar Jha, Adv & Mr. Shankar Kumar Chaudhary, Adv

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

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-07-2018

Heard learned counsel for the parties.

2. This application under Article 226 of the Constitution of India has been filed for quashing the order dated 02.05.2000 passed by respondent no. 4 (Disciplinary Authority) imposing punishment of removal from service and order dated 30.04.2002 passed by respondent no. 2 (Appellate Authority) dismissing the appeal of the petitioner and affirming the order of Disciplinary Authority.

3. Briefly stated, the facts of the case is that petitioner was appointed as Branch Manager in Madhubani Kshetriya Gramin Bank in the year 1980. He was posted at Raghopur Barha Branch in June 1990. He instituted a criminal case in Patuna Police Station on 21.03.1994 regarding destruction and damage of several papers documents and records of Bank by some unknown miscreants giving rise to Bisfi (Patuna) P.S. Case No. 27 of 1994. On 25.04.1994, respondent no. 3, Chairman of the Bank lodged Bisfi (Patuna) P.S. Case No. 51 of 1994 against petitioner (Branch Manager) Musafir Thakur (Cashier) and Satish Chandra Jha(Messenger) under Section 467, 468, 420, 409 of IPC.

4. Petitioner was suspended on 12.05.1994 by respondent no. 3 and suspension was revoked on 21.11.1994 and again

petitioner was suspended on 05.12.1994 and respondent no. 3 on the same day i.e. 05.10.1994 appointed Subhash as Enquiry Officer to conduct departmental enquiry against the petitioner. Allegation against petitioner was that on 21.03.1994, the Branch was to be audited by an Audit Party of the Bank and in view to hide his misdeeds and to destroy the evidence of his acts of omission and commission and misappropriation of bank money, petitioner destroyed the documents and lodged a frivolous FIR that miscreants had entered into the bank and destroyed the Bank papers and documents. Even the police found the allegations to be false and found that petitioner himself had destroyed the papers and documents in the Bank and had lodged a false case to conceal his misdeeds and fraudulent acts.

5. Subsequently, an inventory list was prepared at Branch by a team to ascertain the lost records and subsequently a second team was send for reassembling and reconstruction of destroyed records. After the dislocated transaction of the Branch during 21.03.1994 to 06.04.1994, working was allowed to be resumed on 07.04.1994 and new Branch Manager was appointed who send reports regarding irregularities committed by petitioner.

6. A memo of charge dated 05.10.1994 was served upon

the petitioner with respect to misappropriation, embezzlement negligence in discharge of duty, moral turpitude and breach of banking discipline and acts detrimental to the interest of Bank. Articles of charge were framed against the petitioner in which various acts of omission and commission and embezzlement of depositors money were made part of memo of charge. Allegation is of fraudulent act and misappropriation of depositors money where they had deposited money in cash and entries were made by petitioner in their Pass-book but actually these amounts were not deposited in the bank account.

7. On completion of enquiry, second show cause notice along with copy of Enquiry Report was served upon the petitioner and petitioner submitted his reply against the finding of Enquiry Officer to the respondent no. 3(Disciplinary Authority).

8. On the basis of findings of Enquiry Officer and considering reply submitted by petitioner, respondent no. 3(Disciplinary Authority) on 14.08.1995 imposed punishment of dismissal from service on the petitioner. Petitioner preferred appeal before respondent no. 2 but his appeal was also dismissed on 06.11.1996.

9. Against order of departmental authorities dismissing

him from service petitioner filed CWJC No. 306 of 1997 in Patna High Court and after hearing the parties, the writ petition was allowed on technical grounds and order of dismissal passed by departmental authorities were set aside with a direction to appoint another Enquiry Officer and to decide the departmental proceeding expeditiously.

10. High Court quashed the order of Enquiry Officer and all subsequent orders on the ground that Enquiry Officer had personal knowledge about the allegations made against the petitioner and he was a witness in criminal case lodged against the petitioner and as such he could not have been appointed as Enquiry Officer. The function of Enquiry Officer is quasi judicial in nature and no person having personal knowledge of the allegations could be appointed as Enquiry Officer as there is likelihood of prejudice and bias in the mind of Enquiry Officer.

11. It has been submitted on behalf of petitioner that for similar charge Bisfi (Patuna) P.S. Case No. 51 of 1994 criminal proceeding was pending as such for same charge no departmental proceeding is maintainable. It is now well settled that for similar charges departmental proceeding as well as criminal proceeding can continue simultaneously even charges in departmental proceeding and criminal proceeding are

identical and are sought to be proved by identical set of evidence. There is no bar that during criminal proceeding the departmental proceeding should not continue as in the criminal proceeding the charges are to be established beyond reasonable doubt whereas in departmental proceeding the charges are to be established on the basis of preponderance of probabilities.

12. In compliance of order passed by Patna High Court dated 26.03.1998, petitioner was put under suspension and departmental proceeding was initiated afresh and Sri H.N.P. Singh General Manager, was appointed as Enquiry Officer who commenced enquiry from 30.06.1998 and enquiry proceeding was concluded on 23.03.1999 and Enquiry Officer submitted his enquiry report dated 26.06.1999 to the Disciplinary Authority. The Enquiry Officer after considering the evidence adduced before him and statement of defence of petitioner found all the charges to be proved against petitioner.

13. Charge No. 1- Allegation against petitioner is that he collected the amount from account holder and made entry in their Pass-book but did not deposit the amount in the Bank on the same day and temporary embezzled the amount for his personal benefit. Routine procedure followed in the Bank is that on receiving the cash, it has to be deposited on the same day and

entry to be made in the ledger but petitioner kept the amount from one day to thirty one days with him which is against banking norms. The defence of petitioner about the delay in deposit of cash that same was due to irregularity committed at the cash counter by other staff and closure of Bank was not accepted as there were two to four deposit per day and as such there was no difficulty to maintain proper accounts. The Enquiry Officer has found charge to be proved.

14. Charge No. 2 allegation is accepting cash by the petitioner from account holders but not depositing in the Bank on the same day and defence of petitioner that he used to collect the cash from account holder and made entry in their Pass-book and saving account ledger and thereafter gave the cash on the cash counter but the same was not entered in the ledger by the cashier. The defence of petitioner was not acceptable as per banking norms the depositor had to deposit the cash along with deposit slip to the cashier and after counting cash and tallying with the deposit slip same was entered in the cash deposit register and receipt is granted to the depositor. Thereafter entry in the Pass-book is made by cashier which is counter signed by the Branch Manager. Petitioner deliberately flouted the banking norms so that he could misappropriate the bank money. The

Enquiry Officer has found the charge no. 2 to be proved.

15. Charge no. 3-Allegation against the petitioner is that petitioner collected cash from account holder and made entry in the Pass-book but did not enter in the saving account ledger of the Bank and in the enquiry the allegation was found to be true that petitioner had collected the amount from account holders but did not made any entry of cash deposit in register and embezzled the amount. The charge no. 3 has been found to be proved.

16. Charge No. 4-Allegation against the petitioner is that on 03.06.1993 deposit of Rs. 900/- was made in a saving account but entry in the saving account ledger was made as 04.06.1993 although entry should be made on the same day which shows negligent and reckless act while on duty. Petitioner has stated that the same was a mistake which establishes charge no. 4 against petitioner to be negligent and reckless in performance of his duty. The charge no. 4 has been found to be proved.

17. Charge no. 5-Allegation against the petitioner is that petitioner deliberately did not took tabulation work of saving account as such same remained pending for a long period. Tabulation is a routine work by which accounts are doubly

verified and if there is any discrepancy same is detected. Petitioner stated that same is the work of cashier and clerk in the duty register which has been found to be correct but being the Branch Manager it was his duty to supervise the Tabulation work but since petitioner had misappropriated the bank account he deliberately ignored and avoided Tabulation work and Enquiry Officer has found charge no. 5 to be proved.

18. Charge No. 6-Allegation against the petitioner is that in spite of having knowledge with respect to house allowance from circulars of bank he paid excess house rent allowance to Ashish Chandra Jha, Messenger and Sweeper of the Bank. Petitioner has attributed this to be defect in bank circular but did not explain said defects. Allegation of paying excess house rent allowance and disobeying the direction of Headquarter has been proved by the Enquiry Officer. The charge no. 6 has been found to be proved.

19. Charge No. 7-Allegation against the petitioner is that petitioner took the ledgers of short term loan and long term loan to his residence and not returned same to the Bank which resulted in pecuniary loss to the Bank and failed to keep the ledgers secured and on the basis of evidence adduced before the Enquiry Officer allegations were proved. The charge no. 7 has

been found to be proved.

20. Charge no. 8-Allegation against the petitioner is that Head Office had sanctioned house loan to petitioner and he was required to submit all documents before release of loan amount but without submitting all the documents he gave false information to the Head Office and obtained the loan. Petitioner has stated that he had also obtained loan from LIC after depositing the title deed as such he could not deposit the title deed with the Bank. However, Enquiry Officer has held that said information ought to have been disclosed by the petitioner before obtaining the loan amount and has found charges to be proved. The charge no. 8 has been found to be proved.

21. Charge No. 9-Allegation against the petitioner is that he permitted Messenger and Sweeper Ashish Chandra Jha to reside in the bank premises against the direction of Bank, as same is prohibited. Charge no. 9 has been found to be proved against the petitioner.

22. Charge No. 10-Allegation against the petitioner is that on 19.03.1994, all the employees except petitioner was on leave and on said date petitioner made payment from four saving accounts but did not enter in the payment register and transaction was made prior to destruction of records on

19.03.1994 in the Bank. The defence of petitioner that due to paucity of time such entries could not be made was not accepted as after cash transaction other works are undertaken in the Bank and on said date payment was made to only four account holders and petitioner acted contrary to established procedure. The Enquiry Officer has found charge no. 10 to be proved.

23. Charge no. 11-Allegation against the petitioner is that petitioner made payment of Rs. 500/- on 19.03.1994 but on voucher date 18.03.1994 was found. Petitioner in his defence has accepted it to be slip of pen, as such charge no. 11 has been found to be proved.

24. Supplementary Charge no. 1-Allegation against the petitioner is that he submitted wrong report to the Headquarter with respect to general account register report from 06.03.1994 to 11.03.1994, which was not submitted in accordance with banking norms and same has been found to be proved by the Enquiry Officer. The defence of petitioner that due to shortage of staff wrong report was submitted was not accepted by the Enquiry Officer. The charge has been proved.

25. Supplementary Charge no. 2- Allegation against the petitioner is that petitioner as Branch Manager of Raghopur Barha Branch illegally accepted seven proposals of loan and

disburse it in a clandestine manner and misappropriated the the amount of Rs. 73,256/-. The charge was found to be proved by the Enquiry Officer.

26. Supplementary Charge no. 3-1A- Allegation against the petitioner is that petitioner had made illegal withdrawal of Rs. 91,750/- from joint account in his and his wife name which has been found to be established in the enquiry proceeding by the Enquiry Officer. The defence of petitioner that joint account can be in the name of other persons have been disbelieved and found to be incorrect. The charge has been held to be proved by Enquiry Officer.

27. Supplementary Charge No. 3-1B- Allegation against the petitioner is of excess withdrawal of Rs. 2500/- from his account against the banking norms which has been established in the enquiry and has been held to be misuse of position and charges have been held to be proved by Enquiry Officer.

28. Supplementary Charge No. 3-2A- Allegation against the petitioner is that petitioner collected Rs. 1357.27 as installment of Narendra Jha loan account but did not deposit in the loan account of said account holder and same has been proved in enquiry proceeding.

29. Supplementary Charge No. 3-2B-Allegation against

the petitioner is that petitioner received Rs. 3541.00 as installment of loan but did not deposit it in the Bank account and same has been proved in the enquiry proceeding.

30. Supplementary Charge No. 3-2C-Allegation against the petitioner is that petitioner received Rs. 542 in loan account but did not deposit it in the Bank and misappropriated it.

31. The disciplinary authority issued second show cause notice dated 30.12.1999 to the petitioner along with copy of enquiry report and petitioner submitted his reply dated 21.01.2000 to the Disciplinary Authority. The Disciplinary Authority after considering the enquiry report and findings of Enquiry officer and reply of petitioner against the findings of Enquiry Officer by its order dated 02.05.2000 found charges to be proved against petitioner. Earlier also petitioner was suspended and punished for similar allegations but no improvement was found in petitioner and he was not found to be retained in Bank service, and passed order of removal from service.

32. Against the order of removal passed by the Disciplinary Authority petitioner preferred appeal before the Board of Directors (Appellate Authority) but after due consideration of appeal, the Appellate Authority vide its order

dated 30.04.2002 dismissed the appeal preferred by the petitioner and upheld the order of punishment passed against the petitioner.

33. It has been argued on behalf of counsel for the petitioner that from perusal of enquiry report it seems that Enquiry Officer was biased against the petitioner. It is true that some observations has been made by Enquiry Officer and he has also opined that petitioner should be dismissed from service overstepping his jurisdiction but only on basis of such uncalled for observation whole enquiry report cannot be quashed which otherwise has been properly conducted.

34. It has been further contended that relevant documents demanded by petitioner for his defence has not been made available to him causing prejudice to his defence but petitioner has failed to establish the relevancy of said documents and what prejudice was caused to him because of non supply of said documents. The documents as demanded by petitioner was destroyed by the petitioner himself and thereafter was demanding said documents knowing well that same has been destroyed.

35. After hearing the parties and considering the materials available on record and order passed by the

departmental authorities, this Court finds that petitioner was a Branch Manager holding a sensitive post in the Bank but was indulged in fraudulent acts and misappropriation and embezzlement of depositors money and even after receiving cash money from depositors he did not deposit the same in Bank account and on many occasions deposited cash after much delay and was found committing temporary embezzlement as well as permanent embezzlement of bank money which was proved in a departmental proceeding which was conducted after giving full opportunity of defence to the petitioner.

36. This Court under power of judicial review cannot function as an Appellate Authority against the findings of departmental authorities. The High Court cannot go into sufficiency, reliability or adequacy of evidence adduced during enquiry proceeding as same is function of the departmental authorities. This Court under judicial review cannot substitute its finding for that of Enquiry Officer. The jurisdiction of this Court under judicial review is limited to decision making process and not the decision itself. If there is some evidence before the Enquiry Officer on the basis of which Enquiry Officer finds the charges to be proved then High Court in its judicial review cannot go into the sufficiency or adequacy of

such evidence or re-appreciate/reconsider the evidence to arrive at its own finding as same is beyond the scope of judicial review.

37. The Apex Court in **State Bank of India & Anr Vs. Bela Bagchi** since reported in **(2005) 4 SCC 435** in para 15 has held as follows:-

> "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*, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation 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. That being so, the plea about absence of loss is also sans substance."

38. The Apex Court in the case of **Regional Manager, U.P. SRTC, Etawah And Others *Versus* Hoti Lal and Anr,**

since reported in **(2003) 3 SCC 605,** in concluding part of paragraph no. 10**,** has held as follows:-

> **"**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."

39. This Court does not find any infirmity or irregularity or illegality in enquiry proceeding and in the order passed by the Disciplinary Authority as well as the Appellate Authority, as such is not inclined to interfere in the order passed by the departmental authorities and accordingly, the writ petition is dismissed.

(S. Kumar, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	02.08.2018
Transmission Date	N.A.