# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.5470 of 2000**

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Hari Kishore Mandal son of Late Jugal Mandal resident of village Bounsi, P.S. Bounsi, District -Banka

.... .... Petitioner/s

Versus

1. The Bhagalpur Banka Khetriya Gramin Bank, through the Chairman, Head Office, Mohalla Adampur, P.S. Kotwali town, District Bhagalpur
2. The Board of Directors –cum-Appellate Authority, Bhagalpur Banka Khetriya Gramin Bank, Head Office Adampur, District Bhagalpur.
3. Mr. Samir Kumar, Enquiry Officer, Branch Manager Bhagalpur Banka Khetriya Gramin Bank, Jagdishpur Branch, P.S. Jagdishpur District Bhagalpur

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Purushottam Kumar Jha, Adv.
Mr. Chakrapani, Adv.
Mr. Choudhary Shyam Nandan, Adv.

For the Respondent/s : Mr. Chandra Nawal Kishore, Adv.
Mr. Dhruba Mukherjee, Adv.
Mr. Vishwanath Ram, Adv.
Mr. Ranjeet Kumar Pandey, Adv.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

ORAL JUDGMENT

**Date: 10-04-2018**

The petitioner prays for issuance of appropriate order, direction or writ in the nature of certiorari for quashing the order dated 11.12.1999 of the Board of Directors through the Chairman, impugned at Annexure 19 whereby the order of dismissal dated 4.10.1999 passed by the disciplinary authority impugned at Annexure 17 has been confirmed. The petitioner alongside also prays for quashing of the entire disciplinary proceedings including the chargesheet at Annexure 2 and the enquiry report at Annexure-13 as well as the order of suspension at Annexure-1 together with consequential reliefs.

Facts as it transpire from the records of the proceedings briefly noted is that the petitioner serving as Branch Manager, Gokula Branch of the erstwhile Bhagalpur Banka Kshetriya Gramin Bank, a Government of India undertaking was proceeded against for alleged acts of misconduct and was suspended vide order passed on 16.6.1998 vide Annexure-1 followed by service of charge memo dated 17.7.1998 at Annexure- 2.

The petitioner was charged on two counts, the details of which are present in the chargememo. While charge no.1 to 6 inter alia charges the petitioner of;

(a) keeping the bank unauthorisedly closed for several days;

(b) of operating the bank from his residence;

(c) of flouting the banking rules and abusing his position as a Branch Manager; and

(d) of not instituting police case nor providing details of looted articles/cash, even though the petitioner complained of Dacoity on 27.5.1998 at 2.30 P.M.

Charge No.7 alleges financial irregularities by the petitioner in disbursement of the loans under IRDP Loan Scheme by disbursing it directly to the supplier even though the Scheme required disbursement to the loanee under the Scheme. The volume of such default is Rs.

4,95,000/-.

Charge No.8 again alleges financial irregularities by the petitioner by abusing his power as a Branch Manager to obtain loan without seeking approval from the superior authorities and on the very same security.

Charge No.9 again alleges disbursement of loan to a dead person.

The petitioner though received the copy of the chargememo as manifest from Annexure-3 but he did not give his reply inter alia on grounds that he was severely injured by the anti social elements during the alleged dacoity and thus was not in proper frame of mind to give his reply which he would be submitting after regains his health. The letter is dated 25.7.1998 i.e 2 months after the alleged dacoity.

Since the reply of the petitioner was not forthcoming that the proceedings were held in which the petitioner did participate and which has resulted in the impugned punishment which was confirmed in appeal. It is feeling aggrieved that he is before this Court.

Mr. Purushottam Kumar Jha, learned counsel for the petitioner has appeared for the petitioner while the respondent Bank is represented by Mr. Ranjeet Kumar Pandey.

Mr. Jha, learned counsel appearing for the petitioner has questioned the entire proceedings on grounds that it was held in violation of the principles of natural justice. According to Mr. Jha, neither the documents on which the allegation was founded, was given to the petitioner nor he was given ample opportunity to defend himself. It is also the argument of Mr. Jha that the findings reached by the Enquiry Officer is resting on no evidence and the final orders passed are mechanical in nature.

In response to the charge no.1 which alleges that the petitioner kept the branch in closed position since 11.5.1998 and was found unauthorisedly absent there from, learned counsel has referred to the enquiry proceeding, an extract of which is enclosed at Annexure-8 to submit that no documents were given in support of such closure. It is submitted that the charged officer during the proceedings had clearly stated that the a perusal of the cash scroll, transfer scroll, cash token, summary book and attendance register available in the Gokula Branch would confirm that the Bank was open on each date and which was not possible if the petitioner would have been unauthorisedly absent from office. He submits that specific evidence of recorded transaction was stated by the petitioner and which has not been rebutted.

Responding to charge no.2 which alleges that the petitioner kept the bank ledger etc. in his custody, he submits that it is without any details. He submits that even the charge no.3 whereby the petitioner was charged of operating the Bank from his residence is not resting on any evidence nor there is any evidence that the petitioner along with anti social elements had spent the night at the branch on 26.5.1998 and picked up a fight with customers on 27.05.1998.

As regarding charge nos. 5 and 6 it is submitted that the allegation was unsustainable and without evidence.

Responding to the charge no. 7 and 8 which imputes financial irregularity on the petitioner, it is the argument of Mr. Jha that the acceptance at the admission of the petitioner does not prove the guilt because the disbursement of loan under the IRDP scheme was in tune with the statutory prescriptions and the loan obtained by the petitioner was in tune with the rules. It is the submission of Mr. Jha that a mere admission by the petitioner to the Charge No. 7 and 8 unless found contrary to the Bank rules and regulations, cannot be upheld as a charge. Since the charge no. 9 was not held proved hence Mr. Jha had no submission to offer.

Mr. Jha next made reference to the letter of the Bank dated 22.8.1998 at Annexure 4 to submit that the letter of the petitioner at Annexure-3 whereby the petitioner while explaining his physical condition had demanded documents, was treated as a reply by the respondents. He submits that at every stage of the disciplinary proceeding, impediments were created inasmuch as his request for allowing one N.N. Chaudhary as his defence representative was rejected on grounds of being an outsider even though the rule nowhere prohibits such. According to Mr. Jha the disciplinary proceedings was not held in accordance with the rules and the principles of natural justice and was routinely violated.

The arguments of Mr. Jha has been contested word by word by Mr. Pandey appearing for the Bank. It is argument of Mr. Pandey that the petitioner is a habitual liar for every document on which the allegations were founded, was supplied to him as manifest from copy of the proceedings dated 07.12.1998 at running page 272, the incomplete copy of which has been relied upon by Mr. Jha learned counsel for the petitioner at Annexure- 7 page 49 to canvass that evidence was not given to the petitioner. It is argued that the issue so raised stands falsified by the copy of the proceedings dated 7.12.1998 which clearly records the handing over of the evidence to the petitioner whose signature is also present therein. It is the submission of Mr. Pandey that a serious attempt has been made by the petitioner to mislead this Court by playing a victim card when in fact the proceedings have been held in accordance with the procedures and after observing the settled principles.

Mr. Pandey in reference to the records of the disciplinary proceedings brought on record through supplementary counter affidavit filed on 22.02.2018 has submitted that at no stage has the petitioner complained of any denial of document nor has he objected to the refusal of the Enquiry Officer to allow a defence representative from a different Bank in reference to the statutory prescription which did not permit an outsider as a defence representative. While adverting to the individual charges he submits that even though the alleged dacoity took place on 27.5.1998 as manifest from charge no.6, such was the injury suffered by the petitioner that even after lapse of 2 months, he expressed difficulty in responding to the charge memo on grounds that his physical condition did not permit him to give a purposeful reply.

According to Mr. Pandey, the records of the proceeding would confirm that the petitioner has been shifting his stand by resorting to lie at every stage of proceeding. Learned counsel has referred to the enquiry proceeding dated 27.11.1998 present at running page 267, which records the acceptance of the petitioner to charge Nos.7 and 8 and bears his signature. It is the argument of Mr. Pandey that in fact, charge no. 1 to 5 are actually arising from charge no. 6 inasmuch as no sooner the petitioner gathered information that complaints on closure of bank had reached the superior officers that he concocted a story about the alleged dacoity dated 27.5.1998 but did not choose to institute a police case until lapse of 5 days thereafter, inter alia on grounds that he had been seriously injured by the dacoits and was not in proper frame for several days. The F.I.R. instituted by the petitioner on 03.08.1998 at Annexure-11 clearly mentions that such was the assault on the petitioner that he fainted and when he regained consciousness, he found himself at his residence. It is submitted by Mr. Pandey that while the petitioner in the earlier paragraph of the F.I.R. mentions that he was taken to his residence in a comatose state by his driver, in the concluding paragraph of the F.I.R. he forgets his earlier stand to mention that an application was filed by him before the Station Incharge on 27.5.1998 i.e date of alleged occurrence and which had been kept by the Station Incharge on assurance of proper follow up action. According to Mr. Pandey the two statements of the petitioner in the F.I.R. are self contradictory. It is submitted that there were allegations of the petitioner operating from his residence by keeping the Branch closed and when the matter went to enquiry that a concocted story was built up by him to wriggle out of the situation. He submits that although the petitioner complained of dacoity and even though in his defence he has stated that transactions took place but surprisingly no cash was looted by the dacoits.

In reference to the extract of the enquiry proceeding present at page 297 he submits that even though it is stated by the petitioner that he continued to faint regularly after 27.05.1998 and never went to the Branch but in the very next part he admits that he had visited the Branch on 28. 5.1998. It is next argued by Mr. Pandey that no less than 4 persons were common in the list of witnesses given by the Bank as well as the petitioner and even though these witnesses have supported the closure as well as the absence of books of accounts from the Branch but they were not cross-examined by the petitioner on these statements. It is thus the argument of Mr. Pandey that while the petitioner failed to defend the allegations at charge No. 1 to 6 which stood confirmed by the evidence led by the Bank, in so far as charge No.7 and 8 is concerned, the very admission of the petitioner was conclusive on the guilt.

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

Although exhaustive arguments have been led by the parties but in my opinion the admission of the petitioner to the financial irregularities present at charge Nos. 7 and 8 are enough to uphold the orders impugned.

Mr. Pandey has successfully answered each and every issue raised by Mr. Jha on the procedure followed as well as on the charge of violation of natural justice in so far as the charge Nos. 1 to 6 are concerned and a bare perusal of the records of the enquiry proceeding enclosed with the supplementary counter affidavit would confirm that the petitioner is a rank liar for in the process of rebutting the charge, he has messed up his own defence. Even though the charge against the petitioner of operating the Bank from his residence is a rather serious one for none can be permitted to abuse his position as a Branch Manager to indulge in such violation but the nail in the coffin in the challenge raised by the petitioner is drawn on his confession of the misconduct to charge Nos. 7 and 8 for even though Mr. Jha has rather passionately argued that the disbursement of the loan to the supplier directly instead of the loanees was in accordance with the rules but a copy of the circular dated 10.11.1993 so handed over during the course of the proceeding would in fact confirm the charge set up because it mandates that the amount of loan under IRDP has to be disbursed in the account of the loanees and who has to submit a utility certificate as per expenses incurred together with the bills in support thereof. However, where the amount is less than Rs.5000/- then a mere utility certificate would serve the purpose instead of bill, quotation etc. The Circular issued by the Bank as early as 10.11.1993 is eloquent of the manner of disbursement of the IRDP loan and the acceptance of the petitioner on its disbursement directly to the supplier instead of the loanee, is a clear violation thereof, confirming the serious financial irregularity to the tune of Rs. 4,95,000/-.

The allegation present at Charge No. 8 is even worse for on the same set of security, the petitioner has thrice obtained loan of Rs. 30000/- on 6.12.1997, Rs. 19500/- on 24.1.1997 and Rs. 14000/- on 20.3.1997 by self certification without obtaining permission of the superior authorities.

In my opinion even if the issues raised and contested by the parties in reference to charge Nos. 1 to 6 are held debatable for the sake of argument, the misconduct of the petitioner established at charge Nos. 7 and 8 is unpardonable, for any concession.

For the reasons so discussed, the penalty of dismissal passed by the disciplinary authority as affirmed by the appellate authority is, founded on sound reasons and considering the materials on record confirming the misconduct of the petitioner, the orders impugned warrant no interference.

The writ petition is dismissed but without any order as to costs.

**(Jyoti Saran, J)**

Bibhash/-

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