

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11938 of 2003

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Nagendra Sharma, s/o late Subansh Singh, staff officer, Bank of India, Gaya Branch, Gaya region, temporarily posted at Maner branch in Patna region as staff officer, at present residing at moh-Maurj Bihar Colony, Khagaul, Patna, PS- Phulwari Sharif, Dist-Patna

.... Petitioner/s

Versus

1. The Chairman Cum M.D., Bank of India Express Tower, Norman point, PB no. 11646, Mumbai-400021
2. The General manager-cum reviewing authority, Bank of India, Express Tower, Norman point, PB no. 11646, Mumbai-400021
3. The Zonal manager cum appellate authority, Bank of India Zonal office Chankya place, Birchand Patel Marge, Patna
4. The Chief Regional Manager, Gaya Region and the disciplinary authority, Bank of India Regional office, A.P. colony, Gaya Bihar (now merged with zonal office, Chanakya place Birchand patel path, Patna)
5. The inquiry officer, Bank of India, regional office, Gaya (now merged with zonal office, patna)
6. Shree R.P.M. Sukla, s/o not known, the incoming Manager, Bank of India, Bahadurpur branch, Gaya region, jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi
: Mr. S.S. Sundaram
: Mr. Ajay Kumar Sharma

For the Respondent/s : Mr. Kaushlendra Kr. Sinha
: Mr. B.B. Sharan

: Mr. Shivaji Pandey
For Bank of India : Mr. Rupak Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 23-08-2018

1. The petitioner, by way of the present writ petition,

has prayed for quashing of the order dated 06.12.2000, by which



the petitioner has been dismissed from service. The petitioner has further prayed for quashing of the order contained in Ref. no. 62 dated 30.09.2002, by which the reviewing authority has upheld the order of punishment dated 06.12.2000.

2. The brief facts of the case are that the disciplinary authority had initiated a departmental proceeding against the petitioner herein and articles of charges were served on the petitioner vide letter dated 24.07.1998. At this juncture, it would be appropriate to reproduce the articles of charges hereinbelow :-

During your tenure as Manager at Bank of India, Bahadurpur branch during the period from 23.11.1992 to 17.06.1996, the acts of misconduct as are mentioned hereinbelow are alleged to have been committed by you:

Article of Charge-I

That you sanctioned/ disbursed loans in 30 accounts under IRDP for poultry business without ensuring the end use of funds. You also did not conduct any post sanction inspection to ensure that the funds were utilized for the purpose they were disbursed.

Article of Charge-II

That you made disbursement of part of the loan amount in the aforesaid 30 accounts by transfer to the respective SB Accounts of the borrowers without ensuring corresponding entry in the pass books kept unauthorisedly in the branch and in a number of accounts, you allowed



withdrawal of amount by Sri U.S. Diwedi, the Cashier of the Branch using blank withdrawal forms bearing the thumb impression/ signature of the borrowers unauthorisedly kept along with the loan documents in the branch which were fraudulently withdrawn as the borrowers have no knowledge of such withdrawals and have neither withdrawn or received any amount in cash.

Article of Charge-III

That you unauthorisedly and in gross violation of bank's norms kept the pass books of the borrowers and blank withdrawal forms, credit and debit vouchers bearing the thumb impression/ signature of the borrowers alongwith the loan documents in the branch for making fraudulent withdrawals from time to time in connivance with the clerk cashier Sri Uma Shankar Diwedi of the Branch.

The petitioner had participated in the inquiry, whereafter the inquiry Officer has submitted his inquiry report dated 30.05.2000, whereby and whereunder all the three charges were found to have been proved. Thereafter, the disciplinary authority had forwarded the findings of the Inquiry Officer (inquiry report) vide letter dated 14.07.2000, seeking the response of the petitioner, which was originally sent in a hand-written manner vide letter dated 01.06.2000. The petitioner



had submitted his detailed representation on the inquiry findings and thereafter, the order of punishment, dismissing the petitioner from his services, has been passed vide order dated 06.12.2000. The petitioner has filed an appeal which has also been dismissed by an order dated 30.09.2002.

3. The learned Senior counsel appearing for the petitioner has raised a short issue for consideration to the effect that the charges leveled against the petitioner as also the charges leveled against one Sri Uma Shankar Diwedi, Cashier, posted at the same place where the petitioner was posted and in connection whereof the charges have been leveled, arise out of the same and similar incident of misconduct. In this regard, the learned Senior counsel has referred to the charges leveled against the said Uma Shankar Diwedi which are reproduced hereinbelow :-

Charge no. 1

That you in violation of Bank norms contacted the Borrowers in respect of 30 IRDP loan account for poultry Business sanctioned by the manager, Shri Nagendra Sharma either yourself or through a daily wages staff Sri manraj Thakur and obtained their signatures/ thumb impression on the loan application, S/B accounts opening cards, Blank S/B withdrawal forms and credit. Debit vouchers. The blank S/B withdrawal forms and debit/ credit vouchers bearing the signature/ thumb



impression of the borrowers were kept along with loan documents in the branch in gross violation of Bank's norms.

Charge no. 2

That you unauthorisely used the blank S/B withdrawal forms bearing the signature/ thumb impression of the borrowers to withdraw amounts transfer to their respective saving accounts as part disbursement of the loan in the aforesaid loan accounts without their knowledge as the amounts were not withdrawn/ received by them. You also made respective entries in the ledger and pass books of the borrowers which were also unauthorisedly and in gross violation of bank's norms kept in the branch.

The details of unauthorized withdrawals made by you are mentioned hereinbelow :-

<i>Sl no.</i>	<i>Name of the borrowers</i>	<i>Amount withdrawn</i>	<i>Date</i>
1.	Sri Naresh Paswan	Rs. 3200/-	14.05.1996
2.	Sri Manoj Paswan	Rs. 2435/-	28.05.1996
3.	Sri Bhagwan Paswan	Rs. 3200/-	14.05.1996
4.	Smt. Renu Devi	Rs. 3200/-	14.05.1996
5.	Smt. Itwari Devi	Rs. 3200/-	26.03.1996
6.	Smt. Ganauri Devi	Rs. 3200/-	23.04.1996
7.	Sri nathun Paswan	Rs. 3200/-	26.03.1996
8.	Sri mahangu paswan	Rs. 3200/-	26.03.1996
9.	Sri Lakhon Paswan	Rs. 3200/-	14.05.1996
10.	Sri Ramdriksha Paswan	Rs. 3200/-	26.03.1996
11.	Sri Dinesh Paswan	Rs. 3200/-	04.04.1996



12.	<i>Sri Dhuri Paswan</i>	<i>Rs. 3200/- Rs. 885/-</i>	<i>09.04.1996 08.05.1996</i>
13.	<i>Sri Sudarshan Paswan</i>	<i>Rs. 3200/- Rs. 885/-</i>	<i>09.04.1996 28.05.1996</i>
14.	<i>Smt. Tetri Devi</i>	<i>Rs. 3200/-</i>	<i>09.04.1996</i>
15.	<i>Sri Prabhu Paswan</i>	<i>Rs. 885/-</i>	<i>28.05.1996</i>
16.	<i>Sri Satasi Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
17.	<i>Smt. Renu Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
18.	<i>Smt. Phulbadan Devi</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
19.	<i>Sri Deo Kr. Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
20.	<i>Sri Khakan Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
21.	<i>Smt. Asha Devi</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
22.	<i>Sri Udai Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
23.	<i>Sri Budhdeo Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>
24.	<i>Sri Jagarnath Paswan</i>	<i>Rs. 2435/-</i>	<i>28.05.1996</i>

It is submitted that while the petitioner has been dismissed from service, the said Uma Shankar Diwedi has been exonerated of the charges as is apparent from the inquiry report dated 04.05.1999. Thus, the submission of the learned Senior Counsel for the petitioner is that parity among co-delinquents has to be maintained while punishment is being imposed and the



punishment should not be disproportionate while comparing the involvement of the co-delinquents who are parties to the same transaction or incident. In this regard, the learned Senior Counsel has relied upon a judgment of the Hon'ble Apex Court reported in **2013(3) SCC 73 (Rajendra Yadav v. State of M.P. & others)**, paragraphs no. 8 to 12 whereof are reproduced hereinbelow:-

8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same



transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is [Director General of Police and Others v. G. Dasayan](#) (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate [Article 14](#) of the Constitution of India.

*11. In **Shaileshkumar Harshadbhai Shah case** (*supra*), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.*

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they



were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

4. *Per contra*, the learned counsel for the respondents has, in a feeble manner, tried to controvert the aforesaid argument of the learned Senior Counsel but he has failed to demonstrate that the charges leveled against the petitioner and the said Uma Shankar Diwedi do not arise out of same and similar incident of misconduct.

5. Having heard the learned Senior Counsel for the petitioner and the learned counsel for the respondents as well as having gone through the materials on record, this Court finds that the charges/ incident of misconduct is one and the same as far as the petitioner and the said Uma Shankar Diwedi are concerned, hence considering the law laid down by the Hon'ble Apex Court in the case of ***Rajendra Yadav (supra)***, this Court is of the opinion that parity among co-delinquents has to be maintained when punishment is being imposed and the punishment cannot be disproportionate while comparing the involvement of the co-delinquents who are parties to the same transaction or incident.



6. For the reasons mentioned hereinabove as also in view of the law laid down by the Hon’ble Apex Court, I find that since the petitioner herein and the aforesaid Uma Shankar Diwedi were leveled with the allegations arising out of the same transaction/ incident of misconduct, parity ought to have been maintained in the matter of inflicting punishment. In such view of the matter, the appellate order/ order of review dated 30.09.2002 and the original order of punishment of dismissal dated 06.12.2000 are set aside and the matter is remitted back to the disciplinary authority to consider the entire matter as far as the quantum of punishment is concerned, in light of the judgment rendered by the Hon’ble Apex Court in the case of *Rajendra Yadav (supra)*. It is needless to state that the petitioner will be at liberty to raise all other issues/ contentions for the purposes of assailing the impugned order dated 06.12.2000 and 30.09.2002 at appropriate moment, if need be.

7. The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.09.2018
Transmission Date	NA

