**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Letters Patent Appeal No.1107 of 2015**
**In**
**Civil Writ Jurisdiction Case No.3748 of 1998**

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Shakti Mohan Lal Mallik S/o Late Nageshwar Lal Mallik, R/o Village - Ratanpur, P.S. - Jale, District - Darbhanga, at present residing at Ashok Nagar, Road No. - 8, P.S. - Kankarbag, District - Patna.

... ... Appellant

Versus

1. Chairman and Managing Director Bank of India Head Office, Express Towers, Nariman Point, Mumbai - 400021.
2. The Executive Director and Reviewing Authority, Bank of India, Express Towers, Nariman Point, Mumbai - 400021.
3. General Manager cum Appellate Authority, Express Towers, Nariman Point, Post Box No. 234, Mumbai - 400021.
4. Zonal Manager, Bihar North Zone and Disciplinary Authority, Chanakya Place, Birchand Patel Marg, Patna - 800001.
5. Inquiring Authority in the Department Enquiry against Sri S.M.L. Mallik cum officer, Bank of India, Chanakya Place Birchand Patel Marg, Patna - 800001.
6. Sri Amar Krishna Agrawal, the then officer, Operation Department, Zonal Office, Bank of India, Patna.

... ... Respondents

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**Appearance :**

For the Appellant/s : Mr. Aditya Nr. Singh, Advocate
Mr. Prabhat Kumar, Advocate

For the Respondent/s : Mr. Rupak Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**
**and**
**HONOURABLE JUSTICE SMT. NILU AGRAWAL**
**C.A.V. JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date : 10-04-2018**

This intra-court appeal has been preferred by the writ petitioner, who is the appellant herein, assailing the order dated 09.12.2013, passed in C.W.J.C. No. 3748 of 1998.

2. The appellant had preferred the writ application for quashing the enquiry report dated 12.02.1991, the order of penalty dated 28.10.1993 imposed by the Disciplinary Authority, Zonal

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Manager, Bank of India whereby punishment of removal from service was imposed. The appellant further sought quashing of the appellate order dated 29.09.1994 and review order dated 23.05.1995, passed by the General Manger cum Appellate Authority and Executive Director whereby and whereunder the order of punishment was affirmed.

3. The appellant while posted as Staff Officer, Bank of India, Regional Office, Giridih, was served with memo of charge for his omission and commission while he was posted at Patna (Main) Branch, RCC and Zonal Office, Patna. A set of 11 charges were framed, first of which related to giving 8 credit entries between 28.01.1980 to 04.04.1980 totaling Rs. 4035/- in the ledger account of Smt. Bimla Devi, who was the landlady of the appellant's residential accommodation, provided to him by the Bank and occupied by him, without any corresponding debit entry for which undue pecuniary benefit accrued to the account holder and financial loss towards interest to the Bank. The 2nd charge was that the rent cheque between August, 1982 to December, 1984 was issued without standard tax deduction of 10% in the appellant's basic pay. The 3rd charge was that between 05.04.1983 to 03.12.1983 appellant collected 35 cheques of his landlady and presented them on 8 different dates in the Patna RCC without

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routing them from the Branch and credited the proceeds of Rs. 475/- of cheque no. 025764 in advance and the cheque was not even cleared and amount realised accommodating the landlady with undue credit facility. The 4th charge was that the aforesaid 35 cheques were withheld unauthorisedly by him till 06.03.1984 and himself made credit entries in the account of landlady Smt. Bimla Devi by himself preparing S/B credit vouchers. The 5th charge was that on 23.08.1983 three credit notes of Rs. 1200/-, 6400/- and 1825/- were realised on a prior date in the account of landlady. The 6th charge related to issuance of cheque for Rs. 1817.60 in favour of Life Insurance Corporation of India from his Savings Bank Account without having sufficient credit balance and received by him at Patna RCC. He withheld the same and thereby took advantage of income tax rebate on the said amount of insurance premium. The 7th charge was that the appellant gave undue credit of Rs. 3300/-, 1100/- and 122.32/- to the landlady by issuing three credit notes without realising the amount of relevant cheques causing pecuniary gain to Smt. Bimla Devi and financial loss to the Bank. Charge no. 8 related to travelling expenses of Rs. 172/- on 24 occasions, which were received, signed and sanctioned by him without obtaining sanction of the higher authority and also took payment of Rs. 125/- towards reimbursement of conveyance

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expenses although he had already received claim amount of Rs. 24/- towards travelling expenses for the same period. Charge No. 9 related to rent paid to his landlady by putting open note of the landlady's request letter dated 15.07.1984. Charge No. 10 related to extra payment of Rs. 13,600/- on 08.01.1985 towards payment of arrears of rent @ Rs. 800/- per month for the period August, 1983 to December 1984, although the enhanced amount was sanctioned only on 27.12.1984 and also did not get 10% deduction of house rent from his basic pay. Charge No. 11 was with regard to voucher and pay order of Rs. 14,200/- in the name of landlady for the period August, 1984 to December, 1984 and from August, 1983 to July, 1984 making double payment and over payment.

4. An Enquiry Officer was appointed, who found 10 charges proved and one charge i.e. charge no. 8 partly proved. The Disciplinary Authority i.e. the Zonal Manager passed order of punishment of removal from service vide order dated 06.05.1991. The appellant approached this Court in C.W.J.C. No. 3997 of 1991 stating therein that since the said Zonal Manager, Sri M.V. Palekar was on transfer order, he had no authority to pass order of punishment. This Court thereafter remanded the matter for fresh order to the Zonal Manager who was also the Disciplinary

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Authority, whereafter the order of punishment came to be passed which was under challenge in the writ.

5. The prayer made in the writ application by the writ petitioner-appellant was that since a number of documents were not supplied to the appellant, the entire departmental proceeding was vitiated. It was further averred that the punishment of removal from service was disproportionate to the charges, as, although, 11 articles of charge were levelled, most of the charges were inter-connected and in sum and substance there were only three allegations against the appellant i.e. giving undue favour to his landlady Smt. Bimla Devi, obtaining undue travelling allowance and suppression of undue rebate of 10% from the income tax department. The contention was that the amounts were petty and meager for which removal from service is disproportionate to the charges.

6. Learned counsel for the appellant Sri Aditya Narayan Singh, duly assisted by Sri Prabhat Kumar, has reiterated the stand taken before the writ Court stating therein that the charges levelled against the appellant were related to procedural irregularities and giving personal service to the landlady Smt. Bimla Devi who was an old lady, the punishment of removal from service does not commensurate with the charges levelled and the punishment is

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harsh and disproportionate. He submits that even some relevant documents were not provided although the Enquiry Officer in his proceedings dated 31.01.1990 had directed the presenting officer to take necessary steps for production and discovery of certain documents which was not provided and the proceeding was concluded, hence, the entire departmental proceeding was in violation of the principles of natural justice.

7. With regard to quantum of punishment, learned counsel for the appellant places heavy reliance on the judgment of the Supreme Court in the case of ***Ishwar Chandra Jayaswal Vs. Union of India and others*** since reported in ***(2014) 2 SCC 748*** stating therein that the punishment imposed does not commensurate with the articles of charges and imposition of compulsory retirement would appropriately meet the ends of justice. He further submits that the appellant had worked without any blemish since 1972, was also given promotion and prior to charge-sheet of the year 1988, there was no adverse remark or allegation against him, hence, punishment is severe and inappropriate.

8. Sri Rupak Kumar, learned counsel appearing for the respondent Bank, however, opposed the prayer of the appellant stating therein that the order of the learned Single Judge calls for

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no interference as charges levelled against the appellant was basically pertaining to his integrity and 10 charges were fully proved and one charge partly proved. He submits that during enquiry the documents relied upon were either supplied to the appellant or he was allowed to examine and inspect those documents. The appellant did not plead that non-production of such documents had prejudiced him and the appellant was given full opportunity in the departmental proceeding. He relies on the order dated 17.08.1993 passed by this Court in the earlier round of litigation wherein the plea of non-supply of documents was negated and the matter was remanded to the Disciplinary Authority to the extent for fresh consideration only because the said authority was on transfer order and no decision could be taken by him at that point of time. As regards the quantum of punishment, he submits that an officer/ employee of the Bank has to maintain paramount integrity and slightest deviation warrants dismissal from service and relied on the judgment of the Apex Court in the case of ***State Bank of India and others Vs. Ramesh Dinkar Punde***, since reported in ***(2006) 7 SCC 212***, in the case of ***T.N.C.S. Corporation Ltd. and others Vs. K. Meerabai*** since reported in ***(2006) 2 SCC 255*** and in the case of ***State Bank of India and another Vs. Bela Bagchi and others*** since reported in ***(2005) 7 SCC 435.*** The

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Courts under judicial review of departmental enquiry cannot sit over the finding of the Enquiry Officer or find fault in it nor can appreciate evidence of witnesses examined in departmental enquiry, as stated in the case of ***Mihir Kumar Hazara Choudhury Vs. Life Insurance Corporation and others*** since reported in ***(2017) 9 SCC 404***. He submits that an employee while discharging his duties is required to exercise higher honesty and integrity and take all possible steps to protect the interest of his employer. More so, when he deals with money of depositors and customers.

9. At this juncture he referred to paragraph No. 5.1 (d) of the appellate order dated 29.09.1994 which is quoted hereinbelow:

> *"5.1(d) It is proved in the enquiry, on the basis of documentary evidence, that the credit as well as debit entries made by Shri Mallick in the ledger account of Smt. Bimla Devi were fictitious. Although certain documents sought by the defence could not be produced due to non availability, the relevancy of such documents and in what way it's non production had prejudiced the defence case are not clear, when the entries were proved fictitious in the inquiry. Further, the Inquiring Authority has observed at page No. 3 of the report that the documents sought by the defence and not made available did not relate to the questioned entries. The contention that the excess interest paid in this behalf was Rs. 44.15 is also not borne out of facts. The documentary evidence on record shows the interest paid was Rs. 739.35 and hence undue pecuniary benefit has been passed on to the*

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> *customer. Making fictitious entries in the books of account are extremely serious and is indicative of lack of honesty and integrity."*

10. Considering the facts and circumstances and the order of the learned Single Judge dated 09.12.2013, passed in C.W.J.C. No. 3748 of 1998 calls for no interference. However, since the penalty of removal from service of the Bank has been passed in terms of Regulation 4(g) of the Bank of India Officer Employees' (Discipline and Appeal) Regulation, 1976, which only disqualifies for future employment, the Bank authorities must consider the prayer of the appellant for payment of his retiral and other benefits which has not been barred as a part of the order of punishment.

11. Appeal is dismissed.

**( Nilu Agrawal, J)**

**I Agree.**
**Ajay Kumar Tripathi, J**

**(Ajay Kumar Tripathi, J)**

Rajesh/-

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