**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.3594 of 2013**

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RAMADHAR SAO S/O SHREE SAO RESIDENT OF VILLAGE AND P.O- PAHARPUR, P.S- MADANPUR, DISTRICT- AURANGABAD.

... ... Petitioner/s

Versus

1. THE STATE BANK OF INDIA THROUGH ITS REGIONAL MANAGER, REGIONAL OFFICE, MUZAFFARPUR.
2. DISCIPLINARY OFFICER- CUM- ASSISTANT GENERAL MANAGER, (ADMINISTRATION), ADMINISTRATIVE OFFICER, STATE BANK OF INDIA, MUZAFFARPUR.
3. APPELLATE AUTHORITY- CUM- DEPUTY GENERAL MANAGER (COMMERCIAL AND OPERATION), ADMINISTRATIVE OFFICE, STATE BANK OF INDIA, MUZAFFARPUR.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr. Subodh Kumar Jha, Adv
For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Adv

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**
**ORAL JUDGMENT**

**Date : 16-05-2018**

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 08.01.2011 passed by the Disciplinary Authority (Respondent No. 2) by which petitioner has been dismissed from service from the post of Messenger, State Bank of India, Majirwakalan, as well as appellate order dated 07.12.2012 passed by the Deputy General Manager, dismissing the appeal of the petitioner.

3. Briefly stated, the facts of the case of the petitioner is that he was appointed as Messenger in the year-1997 in the State Bank of India which is a Class-IV post.

4. The allegation for which petitioner was show caused are :-

> "During your posting at our ADB Ramnagar Branch, the undernoted irregularities of serious nature have been observed on your part. You acted negligently and committed several mistakes which are likely to expose the Bank to incur substantial loss. Besides several lapses, few of them are illustrated below.
>
> (a) You were on leave for 5 days up to 19.04.2008, but did not turn up to the Branch till the

> completion of the investigation i.e., 28.04.2008. There was no notice to the Branch in this regard.
>
> (b) It has been alleged that you have been executing loan documents at your residence and at Bank Branch also."

5. Petitioner in his reply submitted that he was posted in the Agricultural Development Branch, Ramnagar and performed his duty as Messenger and denied all allegations levelled against him.

6. Under memorandum of settlement for disciplinary action and procedure, in para 5 expression 'gross misconduct' has been defined and in sub-clause (j) acts of omission and commission in order to initiate proceeding for major misconduct has been defined for which petitioner was show caused, which reads as follows:-

> "(j) doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss."

7. The two illustrations as cited in show cause as mentioned above does not come within the definition of gross misconduct under Clause-5(j) of Memorandum of Settlement. The two illustration as referred in show cause did not come

within the ambit of doing any act prejudicial to the interest of Bank or gross negligence or negligence involving or likely to involve, the Bank in serious loss.

8. The gross misconduct as defined in Clause-5(k) i.e. giving or taking a bribe or illegal gratification from a customer or an employee of the Bank for which petitioner was not show caused, as such there was no occasion for framing charge for which petitioner was not show caused.

9. Petitioner in his reply against allegations stated that he used to print the Pass-book and had no concern with respect to sanction of loan, distribution of loan, as such allegation of performing the duty as middle-man is not correct. He was on leave due to illness from 14.04.2008 to 05.05.2008 and he was not present in the Branch and came to know about the enquiry after he joined the Bank. However, same was not found satisfactory and thereafter charges were framed against petitioner by memo of charge dated 05.01.2010 for three instances of misconduct, which are as follows:-

"(A) It is alleged that in the matter of sanction loan advances of the concerned Branch, he managed to act as middlemen and was alleged to have been collecting the illegal money from the customers of the Bank pertaining to Account No. 30287568733, 30337461081, 30310977071, 30358112002, 30358122134 and 30358122098.

(B) It has been alleged that he had played a very active role from appraisal of the loan/advances to the execution of documents particularly to the account no. 30347461081, 30310977071, 30358122134, 30358112002 & 303581122098 at his residence and Branch also and only after his involvement the disbursement of the loan amount was possible.

(C) It is alleged that during the course of investigation of these irregularities he remained absent from the Bank from 20th April 2008 to 25th April 2008 without any sanctioned leave so as to escape from the investigation proceedings."

10. Petitioner was posted as messenger of State Bank of India, Majirwakalan, District-Gopalganj when departmental proceeding was initiated against him for certain acts of omission and commission and a memo of charge dated 05.01.2010 was served upon him. Petitioner submitted his reply dated 12.02.2010 to the memo of charges. Md. Ashraf Asif Ali, Manager (MPST), State Bank of India, Muzaffarpur, was appointed Enquiry Officer but petitioner was not provided reasonable opportunity and enquiry was conducted in

violation of principles of natural justice and enquiry report was submitted on 04.10.2010 without giving reasonable opportunity to the petitioner to lead his defence.

11. The Enquiry Officer submitted enquiry report to the Disciplinary Authority and thereafter petitioner was terminated from service vide order dated 08.01.2011 and thereafter petitioner preferred appeal but same was dismissed without considering the grounds of appeal by the Appellate Authority.

12. Petitioner is a Class-iv employee working on the post of Messenger in the State Bank of India and allegation against him is that while he was posted at ADB Ramnagar, he had committed several irregularities of serious nature. Allegation against the petitioner is with respect to sanction and disbursement of loan amount to loanee. Petitioner has no role as he is a Class-iv employee in sanction of loan amount or its disbursement. Such decisions are taken up by the Officers of the Bank at different levels and only after all conditions for sanction of loan is fulfilled and required documents submitted the decision to grant loan is taken at the managerial level and petitioner at no stage can be held to be involve for sanction or

disbursement of loan. The allegations against petitioner is that he acts as middleman but the management should also proceed against the Officers and Managerial Staff of the Bank for whom it is alleged that petitioner acted as a middleman.

13. The memo of charge as framed against the petitioner squarely concerns the managerial staff of the Branch for whom it is alleged that petitioner is playing a role between them and customers who are desirous of obtaining loan from the Bank. Petitioner has only been singled out for accepting bribe from loanee but other staffs who have actual role in grant of sanction and disbursement of loan has not been proceeded. There cannot be selective proceeding against the petitioner against a charge which involves many staffs of the Bank and on this ground only the proceeding initiated against the petitioner is liable to be set aside.

14. The charge framed against the petitioner that without his involvement loans could not be sanctioned depicts a very sad scenario that whole branch runs at the dictum of petitioner without involvement of higher ups without whose connivance no loan could have been sanctioned or disbursed as such initiating proceeding against petitioner to cover up

lapses and connivance of higher authorities and petitioner being singled out for proceeding is discriminatory and unreasonable.

15. The last instance of charge that he remained absent during the course of investigation is equally untenable as absence of petitioner cannot cause any obstacle or hindrance in investigation. Petitioner cannot be asked to give evidence against him.

16. The Enquiry Officer in its enquiry report dated 04.10.2010, has found all the three charges proved against the petitioner. Against charge no. 1 the Enquiry Officer has held that no witness has seen accepting any bribe by the petitioner but the Enquiry Officer has held charge no. 1 as proved as petitioner could not produce evidence contradicting such allegation. In a departmental proceeding it is for the management to prove the charge and not the delinquent to prove his innocence.

17. Charge No. 2 exposes the functioning of Bank when it has been alleged that without documentation of petitioner no loan could be sanctioned which itself demonstrates that petitioner has been made scape-goat and

other staff who are equally involved have been let off and not proceeded.

18. Charge No. 3 as framed against petitioner does not constitute any misconduct as PEX-1 and PEX-2 it is apparent that leave of petitioner was duly sanctioned and petitioner had no role to play in investigation of irregularities and his absence did not create any hindrance during investigation by the authorities.

19. The High Court in judicial review of orders passed in departmental proceeding cannot examine the sufficiency or adequacy of the evidence produced before the Enquiry Officer as same is to be examined and considered by the departmental authorities. However, such orders cannot be passed on conjectures and surmises and there should be legal evidence on the basis of which it can be held that charges against the delinquent stands proved.

20. When the order passed in departmental enquiry is dismissal from service, the High Court is expected to deeply scrutinize the order of dismissal from service, as same not only brings disreputation to the employee but he and his family is also deprived of its livelihood and as such it is to be

seen whether proceeding has been conducted in accordance with law and there is fair and objective consideration of the evidences on record and gravity of the misconduct is consummerate to the punishment imposed.

21. The Disciplinary Authority in its order dated 08.01.2011 has passed a very cryptic and non speaking order and has not considered defence of petitioner while passing the order of dismissal and as such is not sustainable. Equally the Appellate Authority has also not applied its mind on the grounds on which the appeal was filed by the petitioner and as such the order dated 08.01.2011 passed by the Disciplinary Authority (Respondent No. 2) by which petitioner has been dismissed from service from the post of Messenger, State Bank of India, Majirwakalan, as well as appellate order dated 07.12.2012 passed by the Deputy General Manager, dismissing the appeal of the petitioner are quashed.

22. The respondents are directed to reinstate petitioner in service with all back wages if he is still in service within three months and if petitioner has retired from service, to treat him in service till the date of retirement and to grant

him all retiral dues within three months from the date of receipt/production of a copy of this order.

23. However, this order will not preclude the Disciplinary Authority to initiate fresh proceeding against the petitioner but said proceeding cannot be selective and all persons involved in said misconduct has to be proceeded.

The writ petition stands allowed.

**(S. Kumar, J)**

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| **AFR/NAFR** | NAFR |
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| **Uploading Date** | 03.07.2018 |
| **Transmission Date** | N.A. |