IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3445 of 2006

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Vinay Kumar son of Loate Chandra Shekhar Pd. Singh, r/o Mohalla Jagarnath Singh Lane Chaudhary Tola, Sultanganj District Patna

... ... Petitioner

Versus

1. Madhya Bihar Gramin Bank, Gaya through its Chairman, Mina Plaza, Opposite Patna Museum, Patna
2. The Chairman Madhya Bihar Gramin Bank, Mina Plaza, Opposite Patna Museum, Patna
3. The Board of Directors, Madhya Bihar Gramin Bank Gaya
4. The General Manager, Madhya Bihar Gramin Bank, Gaya

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Parasmani
For the Respondent/s	:	Mr. Prashant Vedasen
		Mr. Subhash Chandra Bose

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 20-09-2019

The petitioner being a Branch Manager of the respondent Bank was proceeded against on allegation that he did not observe the norms regarding maintenance, safety, upkeep and security of documents including banker's cheque book in the Branch. The charge has arisen in the backdrop of the following facts.

Between 15.12.2001 to 27.12.2001, the petitioner while on leave had handed over charge of the branch to another officer. He returned from the leave on 27.12.2001. On 29.12.2001 it was revealed that the banker's cheque for an amount of Rs. 2.5 lakh was encashed at the State Bank of India. The cheque was drawn from the petitioner's branch. It is in these circumstances that the allegations were levelled against the petitioner that since he had not observed the rules for safe maintenance and upkeep of valuable documents including banker's

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cheque such a withdrawal has been made from the banker's cheque book of the petitioner's branch. The banker's cheque bears signature of the petitioner and the other co-signatory which signature has been denied by the petitioner as being forged.

After hearing the parties and on going through the pleadings on record it is evident that in respect of lapses alleged against the petitioner regarding non observance of adequate safety measures for keeping the valuable documents he has not made submissions before the enquiry officer. His case is that the transaction has been done during petitioner's period of leave between 15.12.2001 to 27.12.2001. He has submitted that he had handed over keys of almirah in the branch wherein all the documents including the banker's cheque book was kept to the Incharge. In the circumstances, he cannot be saddled with the responsibility for encashment done by the banker's cheque book of the branch.

The submission of the petitioner has an inherent flaw inasmuch as the date on which the cheque has been drawn is not mentioned in the proceeding. It is therefore impossible for the petitioner to contend that it was drawn between 15.12.2001 to 27.12.2001 i.e. during his leave. Even the petitioner has not stated the date on which the cheque was alleged to have been drawn. The further submission on behalf of the petitioner is that Incharge of the branch during petitioner's leave and other accused have been awarded much lesser punishment whereas the petitioner has been visited with punishment of withholding

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of three increments and as such the punishment is grossly disproportionate and excessive in the circumstances.

Mr. Prashant Vedasen, appearing for the Bank, submits that substantially the charge was for non observance of adequate precaution in the matter of maintenance of safety and upkeep of the valuable documents in the bank. From bare perusal of the statement of imputation, enclosed along with the charge memo, it would be evident that the petitioner did not ensure that there was a system of duel charge/custody of the valuable documents including banker's cheque book in his branch. There was no system of accounting at the end of everyday as to how many leaf from the banker's cheque were used or remained unused. Even after his joining on 27.12.2001, the petitioner did not verify whether the banker's cheque, which was encashed on 18.12.2001, was issued from the cheque book or not. The fraudulent withdrawal came to light on 29.12.2001. Even pass books were not being updated on daily basis and the banking transactions were being entered in a psudo pass book. These allegations/ imputations have not been denied by the petitioner. Mr. Vedasen, appearing for the bank, has referred to the specific assertion in his written statement, which are as follows:

> "Further on joining on 27.12.01 I did not feel necessary as per rule to verify banker's cheque book; since it was under the charge of Sri Madhusudan Prasad; Officer before myself going on leave; during my leave and after my coming from leave. So no question of detection of fraud by me on 27.12.01, itself arises in such circumstances."

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The petitioner in fact has accepted lapse of not verifying banker's cheque book as per rule.

This Court has considered the submissions of rival parties. The petitioner has not denied the allegations regarding safety and upkeep of documents in the branch. His sub mission is that he had handed over the same to the branch incharge in his absence and there was no reason to doubt that the same would be misused as it was well within the custody of an officer of the Bank lying in the branch in the Almirah. Such stand of the petitioner would not absolve him of observance of norms and requisite caution by at least updation of the banker's cheque book account every day. Admittedly, even after return from his leave on 27.12.2001, at least till 29.12.2001 he has not bothered to see the bank transaction made from banker's cheque. Whether the petitioner can be attributed with issuance of the cheque is an issue which has not been conclusively established by the authorities as the Forensic Science Laboratory has submitted a report that the petitioner's signature on the cheque book was forged. Therefore, at best the petitioner's lack of adequate care in the matter of maintenance and safety of the documents is an issue in the instant proceeding. It is for such reason and in the backdrop of requirement of high standards and caution required from the bank officer that the petitioner has been visited with the punishment of withholding of three annual increments.

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Counsel for the petitioner submits that the punishment is excessive having regard to the punishment awarded to other persons, who were proceeded and were charged in the departmental proceeding.

In this connection, Counsel for the Bank submits that this is an issue which was not raised by the petitioner. There was thus no occasion for consideration of the issue on account of punishment being excessive.

Counsel for the petitioner therefore submits that he may be permitted one opportunity to raise the issue of quantum of punishment before the Appellate Authority i.e. Board of Directors of the new successor in interest of the bank namely Dakshin Bihar Gramin Bank.

Since the petitioner had not raised this issue, liberty is granted, but with a rider that if the authorities are of the view that more lenient view could have been taken in the matter, the effect of the same would be prospective and will not give rise to claim for any arrears by the petitioner, since he had not raised this issue earlier.

If the petitioner makes his application before the Appellate Authority within a period of four weeks, the Appellate Authority should consider petitioner's claim in respect of quantum of punishment by a reasoned and speaking order in accordance with law within a period of three months thereafter.

The writ application stands disposed of with the aforesaid observations and directions.

SNkumar/- **(Madhuresh Prasad, J)**

AFR/NAFR	NAFR
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