IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14429 of 2007

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Gyanendra Kumar Dubey, Son of late Ram Vyas Dube, Resident of 690/691, Vaishali Nagar, P.S.-Supela, Bhilai, PIN-490 023.

... ... Petitioner/s

Versus

1. The Chairman, Punjab National Bank, H.O. 7, Bhikhaji Camaji Place, New Delhi-110066
2. The General Manager, Punjab National Bank, HRD Division, H.O., 7 Bhikhaji Camaji Place, New Delhi-110066.
3. The Deputy General Manager, Punjab National Bank, Bihar (Zone), Zonal Office, Patna
4. The Zonal Manager, Disciplinary Action Cell, Integrated Zonal Office, Punjab National Bank, Patna.
5. The Chief Manager, Punjab National Bank, Boring Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar
Mr. Abhishek Kumar
Mr. Rohit Raj

For the Respondent/s : Mr. Sharad Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 30-05-2019

The present writ petition has been filed for quashing the order dated 30.12.2005 issued by the Deputy General Manager (Zone), Punjab National Bank, Disciplinary Action Cell, Integrated Zonal Office, Patna whereby it has been decided to impose punishment of dismissal from service upon the petitioner herein. Lastly, it has been prayed to reinstate the petitioner back in service and grant all the consequential benefits along with the arrears of salary, increment, promotion etc.

2. The brief facts of the case, according to the petitioner, are

that the petitioner joined as Management Trainee in the service of Punjab National Bank at Patna on 21.12.1981. Subsequently, the petitioner was promoted in the year 1990 to the post of MMGS II Scale. While the petitioner was posted at the Baikatpur Branch as Branch Manager from 08.01.1998 to 24.12.1999, on 24.12.1999, a letter was issued by the Senior Regional Manager of the Bank to the petitioner herein, putting the petitioner under suspension on the allegation of commission of fraudulent activities by him. It is the case of the petitioner that without either framing any charge or initiating any departmental proceeding against the petitioner herein, the Banking authorities have purportedly conducted an inquiry against the petitioner and lodged an F.I.R. on 22.02.2000 against the petitioner herein and on the same day, the petitioner was arrested from his residence and put behind bars, whereafter he remained in custody for about one and a half years i.e. till 02.08.2001 when he was enlarged on bail. Thereafter, a charge-sheet dated 17.08.2002 was served on the petitioner herein directing the petitioner to submit his reply within 15 days. The allegation in nutshell was with regard to the petitioner being involved in handling unauthorized and fraudulent transactions and entering into unauthorized transactions by using his official position, deliberately undertaking fraudulent transactions to cover up fictitious entries made by him earlier, passing of wrong information to his controlling authority, misusing the Government subsidy / DICGC claim amount through deceitful transactions, not ensuring safe keep of documents, vouchers, ledger-sheets etc., with the intention to conceal his fraudulent act and creating fake demand loans in the name of Sundry parties. The petitioner had requested for supplying of certain documents, however, the same was not supplied to the petitioner. The Disciplinary Authority had then appointed an Inquiry Officer vide order dated 06.06.2003, however, the said Inquiry Officer was junior to the petitioner herein, hence, the petitioner had requested for changing the said Inquiry Officer, however to no avail resulting in the petitioner approaching this Court vide C.W.J.C. No. 11006 of 2003 wherein this Court had passed an order dated 25.11.2003 and then, the Disciplinary Authority by an order dated 24.12.2003 had appointed another Inquiry Officer and it was decided to hold de novo departmental inquiry against the petitioner herein.

3. The further case of the petitioner is that since the Bank had refused to supply the relevant documents demanded by the petitioner herein, he was constrained to approach this Court by

filing a writ petition bearing C.W.J.C. No. 3438 of 2004 and this Court by an order dated 31.03.2004 had held as follows:-

> *"So far as supply of the documents are concerned, the application submitted by the petitioner before the authorities is beautifully vague. He has not given the details of the particular documents. If his prayer is accepted then at least two trucks load documents will have to be supplied to him. The offer made by the respondent that all the documents on which the Presenting Officer will place his reliance would be supplied to the petitioner appears to be a fair offer. If advised the petitioner may take part in the inquiry and if the documents are filed by the prosecution / department then he may make request to the disciplinary authority / enquiring authority/management to supply him all the documents on which reliance is being placed and are proposed to be filled during the course of enquiry. Such documents certainly will have to be supplied to him in view of the statement made by the counsel for the Bank. If during the enquiry the petitioner wants to summon certain documents in his defence then such documents, if details are given, would be summoned by the respondent Bank."*

4. Thereafter, the Inquiry Officer was changed vide order dated 02.06.2004, who had conducted the inquiry from 02.06.2004 to 01.06.2005, thereafter, the Inquiry Officer had submitted the inquiry report vide his letter dated 19.09.2005, finding most of the charges to have been proved, the Disciplinary Authority had then enclosed a copy of the inquiry report and issued a second show cause notice dated 22.09.2005

to the petitioner herein, asking him to file his representation / submission to the said inquiry report. The petitioner had then submitted his reply to the said second show cause dated 22.09.2005, whereafter the Disciplinary Authority had passed the impugned order dated 30.12.2005 whereby and whereunder the major penalty of dismissal of the petitioner from service was inflicted upon the petitioner herein. It appears that the petitioner had then filed an appeal, however, the same was also dismissed by an order dated 26.05.2006 passed by the Appellate Authority.

5. The learned counsel for the petitioner has submitted that despite the order of this Court passed by a coordinate Bench in C.W.J.C. No. 3438 of 2004 on 31.03.2004, the relevant documents were not supplied to the petitioner herein inasmuch as only 9 documents out of total 124 documents demanded by the petitioner herein were produced during the course of inquiry and handed over to the petitioner herein. It is further submitted that the Presenting Officer has also confirmed that all the crucial vouchers referable to the charges levelled against the petitioner were not available, hence, none of the charges could have been said to have been proved in absence of the vouchers, which are the only material evidence in Banking transactions. Thus, it is contended that the entire inquiry report is perverse, bereft of any

substance and is not based on any evidence whatsoever, hence, is required to be quashed, consequently, the order of punishment and the appellate order, based on the said inquiry report are also bound to fall and fit to be set aside.

6. Per contra, the learned counsel for the Bank has submitted that the disciplinary proceedings against the petitioner was carried out in a most fair manner and in strict compliance with the requirements of Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 and the petitioner was granted ample opportunity to defend himself during the inquiry proceedings. It is submitted that the petitioner had indulged in a series of fraudulent transactions causing heavy financial loss to the Bank and he was also responsible for not keeping the documents safely. It is stated that copies of all the available documents relied upon by the Management were made available to the petitioner herein during the course of inquiry, as is also apparent from the order of the disciplinary authority dated 30.12.2005, relevant paragraphs whereof can be found at page No. 215 to 217 of the writ petition, not controverted by the petitioner in the writ petition. The learned counsel for the Bank has further submitted that the discussions made by the Inquiry Officer in his inquiry report with regard to individual charges

starting from charge no. 1 /1 to charge no. 1/80, vis-a-vis the contention of the petitioner and the Presenting Officer would show that there is deviation from the Bank's guidelines on the part of the petitioner herein, leading to failure of Bank's system and procedure, as also there has been deviation from the standard practice, by the petitioner with a view to cover up various fake entries made for illegal gains by the petitioner herein. It is further submitted that it is not necessary that the transactions in a branch are only reflected through vouchers, however, the same are also reflected in various other books like Long Books, Day Book, Transfer Journals, Cash Book, Subsidiary Journal Ledgers and General Ledger etc. Lastly, it is submitted that the scope of interference in a disciplinary proceeding is circumscribed for unless a delinquent is able to demonstrate that he has been denied reasonable opportunity to defend himself and / or the orders impugned reflect perversity, no interference is warranted. Reference, in this connection, has been made to a judgment rendered by the Hon'ble Apex Court, reported in ***(1998) 4 SCC 310 (Union Bank of India vs. Vishwa Mohan***) as well as to a judgment reported in ***(2017) 1 SCC 768 (Himachal Pradesh State Electricity Board vs. Mahesh Dahiya***).

7. I have heard the learned counsel for the parties and perused the materials on record and in my view, as far as the present case is concerned, this Court is not required to either delve into the sufficiency of evidence or into the quantum of punishment because a Bank Officer is held to be a repository of public trust and thus, his action is to be transparent and beyond shadow of doubt. Reference, in this regard, is made to the judgments of the Hon'ble Apex Court, reported in ***(1996) 9 SCC 69 (Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik***) and the one reported in ***(2005) 7 SCC 435 (State Bank of India & Anr. vs. Bela Bagchi & Others)***.

8. This Court further finds that as far as the charges no. 1/1 to 1/80 are concerned, the prosecution has relied on several documents in the form of evidence to prove their charges, however, the Charged Officer has virtually only taken one stand that the vouchers pertaining to the same have not been made available, hence, the charge is not proved. This Court finds that the charges levelled against the petitioner i.e. the ones from charge no. 1/1 to charge no. 1/80 are serious in nature since the same effects the financial interest of the Bank and has resulted in heavy losses. This Court further finds that bereft of the vouchers, the Bank has produced materials to substantiate the

charges, which are serious in nature and amount to financial embezzlement, as would be apparent from the relevant portions of the inquiry report being quoted hereinbelow:-

" **Charge No. 1/3**

PO's contention: ME707 (I) & (ii): ME200 (i) & (ii) as well as ME799 (I) & (iii) reveal that on 08.05.98 CO debited Rs. 80000 to MBD (1) head and credited the amount to CC head. As the entries did not reflect any genuine transaction, no specific account was quoted and it has also be to be borne in mind that CC account represents loan sanctioned for business purpose and credit of amount from fixed transaction is further confirmed by the transaction on another date i.e. 25.06.98 when ME 3, 4 and ME's 222 (i) & (ii) reveal that Rs. 80000.00 was debited to SF ledger 10 head and credited to Fixed deposit head without quoting any specific account number to squire up the debit to Fixed Deposit head on 08.05.98. All these transactions were done by the CO himself as testified by MW and no detail was mentioned even on the vouchers as the entry was not representing any genuine business transaction (EPR page no. 112 Q N 2 to 5 : EPR Page No. 114 Q N 16 to 21).

CO's contention: MW has also admitted that both the referred vouchers have been General ledger vouchers (during his reply to Q-16-2 of exam in chief). This was necessitated by balancing of books done by Sri Nand Mohan and the then 2nd man. In absence of complete narration how PO has presumed the entire story without any other documentary evidence. Moreover chargesheet has not contained any transaction details of dt. 8.5.98 showing irregular over these have figured in IR dated 5.10.98. Further without seeing the vouchers of 08.05.98, PO has mischievously presumed that all the vouchers have been prepared and passed by CO. He has forgotten that GLV's are always passed by Incumbent Incharge only. Further he has not elaborated as to how any pecuniary gain was met by me out of the transaction. Hence the charge is

not proved.
EO's Findings: ME's 3,4, 707 (i) & (ii), 220 (i) & (ii), 799 (i) & (iii) 222 (i) & (ii) have been submitted by PO to substantiate the charge. PO in his brief has correlated the transaction Rs. 80000/- is SF & FD. Co in his brief has stated non-availability of voucher, but the vouchers have been supplied as ME's. Co's contention does not hold good.

Charge No. 1/5

PO's contention: ME 709 (i) & (ii) and ME 801 (i) & (iii) reveal that on 16.05.98 Rs. 50000/- was debited to Fixed deposit head and credit to Cash Credit head without quoting any specific account number or the reasons for passing the voucher and ME 7, 8, 713(I) & (II), ME and ME 224 (I) & (II) reveal that on 29.06.98 SF 8 was debited with Rs. 50000/- and credited to Fixed head without quoting any specific account number to squire up the debit to Fixed deposit head on 16.05.98. All these transactions were done by the CO himself and no detail were mentioned even on the vouchers as the entry was not representing any genuine business transaction.
CO's contention: MW has also admitted on page 115 of EPR that vouchers referred in this charge are Daybook vouchers which have been prepared only on recommendation of Sri Nand Mohan and the then 2nd man who were balancing the books. As these are DBVs hence had to be passed by Manager. Further the chargesheet has contained no details of any transaction dtd. 16.05.98 and without seeing any such vouchers. PO mischievously and baselessly with only view to implicate me, simply jumped on the conclusion that all the vouchers have been prepared & passed by me as if the branch had only one functioning (C.O), in complete disregard of I & C Cir. No. 13/98 on staff accountability. Further, he has not elaborated over could be prove as to how the money was siphoned off/misappropriated. Notably, this transaction never figured in IR dt. 05.10.98. Hence charge is not proved.

EO's findings: PO has submitted ME's 709 (i) & (ii), 801 (i) & (iii), 7, 8, 713 (i) & (iii), 224 (i) & (ii) for proving the charge. All transactions were done by CO as per the brief of PO. CO again has deviated from defending the charge and could not substantiate to prove his stand. The charge is proved.

Charge No. 1/11
PO's contention: ME 17, 18, 718 (i) & (ii); 229 (i) & (ii) and ME 809 (ii) & (iii) reveal that on 16.07.98 DL head was debited with Rs. 69243/- at BO: Baikatpur to credit BO: Kankerbagh for adjustment of Demand loan at theirs in the name of CO but no such loan was reported in the ledgers of the branch.
CO's contention: Again, PO has admitted that D/L was debited to respond to ODD of BO: Kankerbagh and Advice/TPO sent to Kankerbagh which they have confirmed also. Sameday, RMO Patna was informed about this transferred loan a/cs. All other formalities of entering D/L a/c in Bank's books were done by Sri NandMohan (Staff) as per rule and that is why it did not figure in IR dated 5.1.98 of the branch which continued for 6 full weeks. Hence charge is not proved. (All a/cs have been opened in ledgersheets).
EO's Findings: PO has produced ME 17, 18, 718 (i) & (ii); 229 (i) & (ii) and ME 809 (ii) & (iii) to substantiate the charge. CO in his brief has not contradicted the nature of the charge. The charge is PROVED.

Charge No. 1/13
PO's contention: ME 21, 22, 23(i) & (ii) show that on 25.07.98 Rs. 1050/- was debited to inoperative head and credit to Cash credit head without any narration justifying the transaction and quoting any specific ledger/account etc. the voucher on exhibit as MEs quoted above were prepared & passed by CO himself and no narration was given to conceal the bogus nature of transaction and to facilitate misappropriation without detection.
CO's contention: On one hand PO say that

Narration on vouchers are not complete and immediately he presumes every thing as if he was standing there when the voucher was prepared. He has completely disregarded the staff accountability system of the bank & I & C cir 13/98 also. But still he has failed (despite baselessly presuming) to prove as to how the money was misappropriated out of this instant transaction. Hence not proved.
EO's Findings: PO has produced ME 21, 22, 23(i) & (ii) to substantiate the charge. Co in his brief has just evaded the main point. The charge is proved.

Charge No. 1/14
PO's contention: ME 23,24, 722 (i) & (ii), 232 (i) & (ii) show that on 27.07.98 Rs. 22699.87 was debited to inoperative head and credited to intt. Accrued on deposits head without any narration justifying the transaction and quoting any specific ledger / account etc. on the voucher to cover up the funds siphoned from Intt accrued on deposits. Needless to say that all the vouchers were prepared & passed by CO himself and no narration was given to conceal the bogus nature of transaction and to facilitate misappropriation without detection.
CO's contention: This is genuine and simple transaction of reversing the excess interest paid by my predecessors to inoperative a/cs. All a/cs in this case have been debited in folios (respective) by non-else than Sri Nand Mohan and consequently the debited amounts (Total) was credited to GL head Interest Accrued on deposit. No irregularity was ever reported in this transaction in IR dt. 05.10.98. PO has also failed to prove as to how by crediting "Intt. Accrued on Deposit"-GL head, the money was misappropriated. Hence charge not proved.
EO's Findings: PO produced ME 23, 24, 722 (i) & (ii), 232 (i) & (ii) to substantiate the charge. CO in his brief has not contradicted the modus operandi & the deviation from the banking procedure & guidelines retraining any such non-

banking transaction & has tried to mislead from the facts. The charge stands PROVED.

Charge No. 16

PO's contention: Similarly, ME 27, 234 (i) & (ii), 724 (i) & (ii) reveal that on 11.08.98 Rs. 41864.78 was debited to inoperative head and credited to intt accrued on deposits head without any narration justifying the transaction and quoting any specific ledger/account etc. on the voucher to cover up the funds siphoned from intt. Accrued on deposits. Needless to say that all the vouchers were prepared & passed by CO himself and no narration was given to conceal the bogus nature of transaction and to facilitate misappropriation without detection.

CO's contention: Here also the transaction is recovering excess interest from Inoperative a/cs and Interest accrued. On Dep. GL head was credited strictly as per Bank's norm. During the process if a/cs were closed then sheets were shuffled to "closed a/c binder", How can "GL-head crediting "become an act of misappropriation-PO has failed to prove. Hence charge is not proved.

EO's Findings: PO has produced ME 27, 234 (i) & (ii), 724 (i) & (ii) examined at EPR folio Nos. 126 & 127 to substantiate the charge. Cos brief is not to the point as such the charge is proved.

Charge No. 1/21

PO's contention: ME 38, 39, 40, 731(iii), 942(iii) & (iv), 373 and 507 reveal that on 15.09.98 Rs. 268000/- was shown as disbursed through cash from demand loan sanctioned to various persons reported in demand pronote no. 76/98 to 82/98 and the amount was got credited in Sundry account, but the loan amount was not debited to GL head of demand loan on that date as reflected in ME 507. On that day itself Sundry account was debited with Rs. 268000/- and Rs. 13000/- was credited to DL Rekha Jha and remaining amount of rs. 255000/- was credit to Demand loan General Ledger head. No specific accounts were *credited and here it will be pertinent to recall the bogus debits of Rs. 130000/- & Rs. 70000/- on 15.09.98 (detailed against Sl. No. 16) and that of Rs. 50000/- on 03.07.98 (detailed against Sl. No. 7). These fraudulent debits to demand loan were squired through this credit of Rs. 255000/- to demand loan.*

CO's contention: Pl. peruse ME 359-365 (Document Register folios) where two bank officials have signed (other being Nand Mohan), both, as custodian as well as in whose presence the borrowers have signed. Thus the loans were properly sanctioned and disbursed through consideration vouchers (original with PNB 308 declared not-available) and duplicate ones (ME 1092-98) were duly stamped by cashier and prove that vouchers prepared by NandMohan. Further, please see ME340-346 (ledger folios) where all the referred demand loans were fake, without any documentary evidence. Notably, these a/c were not reported by Inspector also in IR dt. 05.10.98 as irregular. PO, too have failed to show as to how amount was misappropriated. Hence charge not proved.

EO's Findings: PO has produced ME 38, 39, 40, 731 (iii), 942 (iii) & (iv), 373 and 507, MEs 38, 39 & 40 have been examined at EPR 136 and ME 942 (iii) & (iv) examined at EPR 135. CO in his brief has not been specific to the charge and has dragged shri Nand Mohan staff at BO: Baikatpur at that time. He has also not produced sh Mohan as defence witness. Thus the charge is proved.

Charge No. 1/22

PO's contention: ME 43, 44, 732(i) &(ii), 242(i) &(ii), 732 (i) & (ii) reveal that on 19.09.98 CO debited HO account with Rs. 157710/- and credited the proceeds to Demand Loan head. Again all the entries were made by the CO himself and no detail regarding the basis of transaction, head office branch debited or the specific DL account credited were mentioned. If we peruse the bogus debits of Rs. 88467/- and that of Rs. 69243/- made by the CO on 09.07.98 & 16.07.98 *(detailed against Sl No. 9 & 10 above) it would become that the instant transaction was made to squire those bogus entries.*

CO's contention: While submitting his contention, the PO has forgotten if we debit "HO" without authority, how IOAD will tally? PO has not spoken anything over shown this entry as outstanding entry of IOAD as well. So far Rs. 88467/- & Rs. 69243/- were concerned, respective HO a/cs had already been credited on respective dates when these ODD entries were responded and respective. Advices / TPOs were sent to respective branches also. Then how second time same amount will be debited to HO a/c, that too without authority. PO has been silent because what he submitted does not have any documentary evidence. He also has not shown/elaborated how money was misappropriated. But I have to submit that such entry has never been reported by Inspector in his IR dated 05.10.98 who inspected for 6 weeks. Hence the charge is proved.

EO's Findings: PO has produced ME 41, 42, 242(i) & (ii), 732(i) & (ii) to substantiate the charge. The MEs were not examined by PO or Cross-examined by CO. CO in his brief has not produced anything to disprove the charge. Hence the charge stands proved.

Charge No. 1/24

PO's contention: ME 45 & 46 show that on 25.09.98 Rs. 28986/- was debited to sundries account and credited to CA account, again the vouchers were reared and assed by the CO himself and no narration of sundries debited or the specific current account head credited has been made. This was to conceal the fraudulent nature of transaction as revealed by perusal of ME 329, which shows that on 25.09.98 the following sundries entries were reversed.

(I)	*Rs. 17200.00*	*(Old age pension)*
(ii)	*Rs. 161.00*	*(ODBC)*
(iii)	*Rs. 100.00*	*(SF related entry)*
(iv)	*Rs. 1000.00*	*(TL instalment)*
(v)	*Rs. 100.00*	*(SF related entry)*

(vi) Rs. 10000.00 (SF related entry)
(vii) Rs. 425.00 (ODBC Realization)
Total :: Rs. 28986.00

From the above it is obvious that entries pertained to various heads including old age pension but all these were reversed and credited to unspecified CA head and thus to square entries of misappropriation.

CO's contention: PO has picked up a few entries from here & there from sundreis and ridiculously concludes that CA head credit is misappropriation. He has also not elaborated as to which all entries have been squired up. Further this entry has not figured in IR dt. 5.10.98. PO has failed as to how the amount is misappropriated. Hence the charge is not proved.
EO's Findings: PO has produced MEs 45, 46 & 329 to substantiate the charge and in his brief has co-related the entries amounting to Rs. 28986/-, Co in his brief has beaten about the bush & has not contradicted the contention of PO. As such charge is PROVED.

Charge No. 1/25
PO's contention: ME 47, 48, 734(i) &(ii), reveals that on 25.09.98 CO debited SF ledger-3 and credited FD ledger-10 with Rs. 80000/-. Again without any narration of reason for passing the entry in the name of adjustment. The preparation, assign of the voucher has again been done by the CO himself and the reasons thereof was that the voucher was without any genuine basis and in fact this was meant to squire the bogus entry dated 25.06.98 made to the debit of SF ledger (detailed against Sl. No. 3 above).
CO's contention: This a normal transaction of Adjustment voucher between 2-GL heads necessitated during balancing and passed by Manager on recommendation of balancing staff (Sri NandMohan and the then 2nd man). PO has mischievously and mallaccously tried to implicate me by hook and by crook by linking amounts but

failed to prove as to how the amount has been misappropriated by me out of this transaction. Notably this has not figured in IR dated 05.10.98 also. Hence charge is not proved.
EO's Findings: PO has produced ME s 47, 48, 734 (i) & (ii) to substantiate the charge, PO's contention of the voucher were without any narration & prepared by CO himself to square off earlier entry dtd. 25.06.98 has not been contradicted by CO in his brief. Co in his brief has rather tried to justify without any evidence. Thus the charge stands PROVED.

9. Apart from the aforesaid instances of grave misconduct on the part of the petitioner, which is apparent from the relevant portion of the inquiry report quoted hereinabove in the preceding paragraph, there are other instances, which is evident from the inquiry report itself and shows that there are several charges, which have been held to be proved by the Inquiry Officer.

10. Moreover, this Court finds that the Inquiry Officer, as far as charge no. 8 is concerned, has clearly held as follows:-

"Charge No. VIII

EO's Findings:

In all the charges 1 to 34 there is the deviation from the bank's guidelines and leads to failure of Bank's system and procedure. In all the cases mostly there has been deviation from the standard practice. The entries have been made to cover up or accommodate the various fake entries made for various purpose and to debit of various

GL heads which are unauthorized. CO being the then custodian of the branch has failed in his duties to run the office as per guidelines and in maintaining the upkeep of the Bank's records. The charge is proved."

11. This Court further finds from the perusal of the inquiry report that the petitioner has contravened the banking system procedure and guidelines resulting in other charges to have been held to be proved as well.

12. This Court has further perused the impugned order of punishment of dismissal dated 30.12.2005, which has dealt with all the charges individually and it would be relevant to reproduce the relevant portion of the same hereinbelow:-

"The Charged Officer (C.O.) did not attend the P.H. fixed on 31.01.04 as such the I.A. decided to start hearing on a regular basis from 19.02.04 and a notice to this effect was served to the C.O. by I.A. under Regd. cover on 31.01.04 but C.O. again failed to attend the enquiry. However, the I.A., with a view to expedite the enquiry permitted submission of document part from prosecution side and after conducting the proceedings, the I.A. sent the copies of Management documents exhibited in the case along with the copy of the proceedings held on 19.02.04 vide his letter dated 01.03.04 and also informed the C.O. that next date of hearing had been fixed on 12.03.04 and that his request for engaging legal practitioner as his defence asstt. had been rejected by the D.A. As regards the plea of the C.O. for supply of 14 sets of various defence documents mentioned in his letter dated 15.02.04 C.O. was directed to submit its relevance to I.A. on the next date of hearing which was fixed on 12.03.04. The C.O.

did not attend the proceedings on 12.03.04 and a copy of the proceedings of enquiry held on 12.03.04 was forwarded to C.O. vide I.A.'s regd. letter dated 15.03.04 with the information that next date of hearing in the case was fixed on 27.03.04 and C.O. was requested to attend the enquiry. Subsequently the C.O. vide his letter dated 23.03.04 informed the I.A. that he has moved to the Hon'ble High Court at Patna on the point of refusal of Defence asstt. by the D.A. with an intention to create hindrance in the matter. The D.A. vide his letter dated 27.03.04 informed the C.O. that records of the case reveal that despite issuing of proper notices by the I.A., C.O. did not appear in the P.H. in the case vis-a-vis subsequent dates fixed thereon, to defend his case.

Neither did he conduct inspection of Management documents in terms of Regulations despite receiving copies of Management documents nor did he ever turn up in the enquiry proceedings to make his defence although C.O. was continuously reminded through notices/ letters to attend the enquiry to defence his case by the I.A. vis-a-vis from Z.O. Patna.

The proceedings conducted on 15.07.04 was attended by the Charged Officer alongwith the Defence Assistant and the residual defence documents were submitted by the P.O. as requisitioned by the Charged Officer.

However, as is evident from the charges proved above, the charged officer used to indulge in unethical practices by misutilising his official position. The modus operandi adopted to defraud the bank was by debiting / crediting unauthorisedly, various heads of GL, parking the bank's fund in the conduit accounts and siphoning-off the funds for self-gain through misappropriation. The unauthorized debits were covered up by debiting impersonal heads and the outstanding entries got reversed by passing direct day book / GL vouchers.

The C.O. in his representation dated

4.10.2005 has put forth that documents demanded were not made available to him. However, the C.O. instead of giving proper logic to counter each charge has repeatedly alleged that the defence documents were not provided to him whereas the fact is that he deliberately did not ensure safe keep of documents / vouchers with a view to conceal misappropriation of Bank's funds. Even in absence of certain documents/vouchers the charges as discussed above, have been proved on the basis of other related books / records of the bank.

The argument put forth by C.O. in his representation dated 4.10.2005 in respect of the definition of "Misappropriation" is not acceptable as the modus operandi adopted on his part as proved under various charges above, itself speaks how he misappropriated the bank's fund.

Shri Dubey during his incumbency used to write various books of the branch / bank and it is observed that he indulged in fraudulent acts utilizing the books and manipulated the same with an ulterior motive on several occasions. A very complex accounting procedure was adopted by him. Transaction entries have been found suitably tailored with multiple set of entries and the intention was to camouflage / conceal the fraudulent acts. Transactions through transfer entries have been used mainly to misappropriate / siphon off Bank's finds. The C.O. was carrying out the exercise with utmost care and constant manipulation to conceal the unauthorized transactions from visiting officials. Nomenclature of vouchers has been found charged by C.O. while posting the entries in GL from Day Book or transfer journal. All the books have been found neatly closed, vinitialed and signed by the charged officer to make one feel that every thing was in order and the transactions recorded in the books were genuine and without malafide intentions. Moreover, a number of relevant *records have been removed by him from records to conceal irregular / malafide transactions.*

Records reveal that misappropriated funds have been found (i) credited to CC-26 (ii) credited to other borrowal accounts (iii) utilized for squaring-up of loan accounts of charged officer (iv) remittance of fund by transfer to other branches by way of drafts / credit advice, adjustment of loan or otherwise. Major account heads have been affected as a result of spurious / irregular entries having fraudulent overtones.

This is observed as a well calculated plan to misappropriate / siphon off Bank's funds by the C.O.. As such, I have lost my confidence in Shri G K Dubey.

In view of the above finds, with due application of mind, I hold Shri G.K.Dubey guilty of the charges revealing grave misconduct on his part and accordingly decide to impose upon him a Major Penalty of Dismissal which shall ordinarily be a disqualification for future employment under Regulation-4(j) of Punjab National Bank Officer Employees' (D&A) Regulations, 1977."

13. Now coming to the appellate order dated 26.05.2006 whereby and whereunder the appeal of the petitioner has been rejected, it would be relevant to quote paragraph no. 5 of the same hereinbelow:-

"I have examined the points raised by Shri Dubey in his appeal along with records of the case. I find that enquiry proceedings have been conduced strictly in terms of provisions of PNB Officers Employees' (D&A) Regulations, 1977 and he was given full opportunity to put forth his defence. The charges which have been held as proved are based on detailed assessment of

documentary evidence, the position of witnesses and as well as circumstantial evidence, which led to the conclusion that he deliberately did not ensure proper safe keeping of documents, vouchers, ledger sheets, etc. with intention to conceal his unauthorized/fraudulent acts (Article VI). His contention that 95 requisition defence documents which were exactly quoted in various charges in the charge sheet were denied to him in contravention of the order of the Hon'ble Patna High Court is not tenable. As the transactions in a branch are not reflected through vouchers only but also reflect in various other books like Long Books, Day Book, Transfer Journals, Case Book, Subsidiary Journal Ledgers and General Ledger etc. Further, whatever records was available in the branch and relevance thereof was accepted by enquiry officer as defence exhibit were supplied to the appellant in compliance of the directive of the Hon'ble High Court, Patna as such there is no violation of directives of Hon'ble High Court. The order of the Disciplinary Authority is based on the records of the enquiry and no additional charge has been levelled against him in the order dated 30.12.2005. His argument that charges II/2-9, 12, 13, 19, 20, 22, 23-28 were not held as proved/discussed in the enquiry report is not supported by the evidence on record. It has been established in the enquiry that the appellant committed fraud at BO Baikatpur by siphoning-off funds through 124 entries of different amount in different heads of G.L/Revenue Heads and also by making credit entries unauthorizedly and fraudulently in CC account no. 26. The undue favour to a particular account/person not only proved his vested interest but also proves misappropriation of bank's fund. It is a matter of record that FIR was also lodged with PS Khusrupur. The police have submitted the final report by now in the court of law and the criminal proceedings against him are under trial stage."

14. It is, thus, apparent from a bare perusal of the discussion

made by the Inquiry Officer in its inquiry report submitted by a letter dated 19.09.2005, the order of dismissal passed by the Disciplinary Authority dated 30.12.2005, as also the appellate order dated 26.05.2006 that the materials / evidence produced and discussed for upholding the charges levelled against the petitioner herein, rest on tangible materials and the petitioner, as a Bank Officer, has miserably failed in maintaining commitment, honesty, integrity, devotion, diligence, discipline and alertness. In this regard, it would be apt to reproduce paragraph no. 14 of a judgment rendered by the Hon'ble Apex Court in the case of ***Chairman and Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar, reported in AIR 2003 SC 1571*** hereinbelow:-

> *"14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, reported in (1996) 6 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority.*

> *The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."*

15. Similar views have been expressed by the Hon'ble Apex Court in cases reported in ***(2003) 3 SCC 605*** (*para 10)* ***(Regional Manager, U.P. SRTC, Etawah & Ors. vs. Moti Lal & Anr.), (1996) 6 SCC 69 (Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik)***, ***(2005) 1 SCC 13 (Ganesh Santa Ram Sirur vs. State Bank of India and Anr.), (2005) 6 SCC 321 (Canara Bank vs. V.K.Awasthy), (2005)7 SCC 435 (State Bank of India & Anr. vs. Bela Bagchi & Others), (2005) 10 SCC 84 (Damoh Panna Sagar Rural Regional Bank & Anr. vs. Munna Lal Jain), (2008) 8 SCC 92 (State Bank of India & Ors. Vs. S.N.Goyal), (2010) 11 SCC 233 (General Manager (P), Punjab & Sind Bank & Others vs. Daya Singh).***

16. Having regard to the facts and circumstances of the present case as also considering the materials available on record and for the reasons discussed hereinabove, this Court finds that the findings of the Inquiry Officer, whereby charges

have been held to be proved by the Inquiry Officer, are founded on cogent materials, sound reasons, proved misconduct of the petitioner and cannot be termed perverse, hence has rightly persuaded the Disciplinary Authority as well as the Appellate Authority to impose and confirm the punishment of dismissal of the petitioner from his services, thus no interference is required by this Court. In any view of the matter, it is a well settled principle of law that the High Court, while exercising the power of judicial review over the order of the Disciplinary Authority, does not act as a court of appeal and re-apprise evidence. The High Court interferes with the findings of the Inquiry Officer only when the finding is found to be perverse, which is not the case in the present matter, hence, no interference is warranted by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India.

17. This Court is of the view that the petitioner being the Manager of Baikatpur branch office was required to exercise the highest standards of honesty and integrity and was required to take all possible steps to protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing, which was / is unbecoming of a Bank Officer as well as maintain good conduct and discipline, hence,

in such a scenario, the charges levelled against the petitioner clearly tell upon his role as a Bank Officer and if the circumstances accompanying the disciplinary proceedings has persuaded the disciplinary authority and the Appellate Authority to dismiss the petitioner from his services, no fault can be found either in the decision making process or the decision itself. This Court further finds that there is no procedural illegality or infirmity, as far as the conduct of disciplinary proceedings in the present case is concerned, hence there is no occasion for the Court to interfere in the matter.

18. Having considered the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not find any merit in the present writ petition, hence, the same is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	26.10.2018
Uploading Date	30.05.2019
Transmission Date	NA