

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 579 of 2010**

Vijay Kumar Uppal S/o Late Shri Nandlal Uppal, aged about 48 years, R/o 19/76, Maitri Kunj, Risali, Bhilai, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. Durg Rajnandgaon Gramin Bank, Through its Chairman, Near Mutda Kunj, GE Road, Rajnandgaon, Chhattisgarh.
2. General Manager-cum-Disciplinary Authority, Durg Rajnandgaon Gramin Bank GE Road, Rajnandgaon, Chhattisgarh.
3. A.R.P.Rao, Senior Manager-cum-Inquiry Officer, Bhilai III, Durg, District Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Ashutosh Pandey, Advocate.
For Respondents	: Shri N.N.Roy, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****15/02/2019**

1. Heard learned counsel for the Petitioner and the learned counsel for the Respondents.
2. Writ application was filed by the Petitioner against the notice of disagreement issued to him by the Disciplinary Authority. Admittedly, in the enquiry which was held against him for several charges of omission and commission, the Enquiry Officer exonerated him of the charges, however, the Disciplinary Authority issued a show cause on 01.02.2010 as a notice of disagreement giving his reasons culled out from the enquiry report itself as to how and why the Enquiry Officer seems to have gone wrong in the conclusions despite the evidence being available on record. A very detailed notice of disagreement is available on record as Annexure P/5.

3. While the writ application was pending on the correctness or otherwise of the notice of disagreement, a final order of punishment dated 27.02.2010 came to be passed which is also under challenge by way of an amendment and even the appeal seems to have been dismissed vide order dated 02.11.2010, a copy of which is Annexure R/1.
4. The thrust of the argument on behalf of the Petitioner is on the notice of disagreement. He submits that the notice of disagreement should have been quashed or still liable to be quashed because a reading of the same shows prejudicial mind of the Disciplinary Authority. The notice of disagreement itself records as to why the Petitioner ought not to be dismissed from service. This, according to the counsel falls foul of the law laid down by the Hon'ble Apex Court in the case of **Yoginath D. Bagde v. State of Maharashtra & Another**; (1999) 7 SCC 739. Reliance is placed on paragraph 32 of the said decision. Another decision relied upon is the case of **Lav Nigam v. Chairman & MD, ITI Ltd. & Another**, (2006) 9 SCC 440.
5. The Court has difficulty in applying the principles on which reliance has been placed by the counsel for the Petitioner because application of such principles has to be based on facts of the case. This Court has also gone through the detailed notice of disagreement and the notice itself indicates as to the evidence which had come during the course of enquiry and as to the conclusions that can be reached therefrom, pointing towards the guilt of the delinquent in relation to the set of charges. While appreciating those evidence and material, it cannot be anybody's case that the Disciplinary Authority will only deal with them and he will leave it wide open as to the conclusion which is required to be reached, because if that be so, a delinquent will again make a grievance that he did not know as to what was the conclusion on the evidence and material, therefore, he could not clearly take a defence whether he was exonerated or held guilty. Therefore, a *prima facie* opinion as to the conclusion which can be reached on the

evidence will be required to be recorded in the notice of disagreement. More so, since the Disciplinary Authority has to record whether he is with the findings of the Enquiry Officer or against the same.

6. The next line of argument being made is that the notice of disagreement also indicates as to the kind of punishment which is required to be imposed. I do not accept the argument of prejudicial mind. It is only an indication looking at the gravity of the findings which has emerged from the enquiry as to the kind of punishment which can visit the employee, proceeded against.
7. In fact, it will be in the interest of the employee keeping in mind the evidence and materials coupled with the conclusion as to what may await him as the final order of punishment if he otherwise fails to satisfy the authority with regard to his opinion which he has recorded in the notice of disagreement. By doing so, at least the element of surprise has been taken out of it and the employee is given full opportunity to defend himself if he has an explanation to offer on all those aspects of the matter.
8. The Court also has noticed from the records that in the notice of disagreement, the Petitioner had even been given an opportunity of personal hearing for which date, time and place was indicated. Therefore, it cannot be a case that no due process was followed and tentative opinion so reached or expressed can become vulnerable on the ground that such expression of opinion, though tentative, shows prejudicial mind.
9. So far as the order of punishment is concerned, a very detailed order again has been passed taking into consideration the objections and explanation offered by the Petitioner and to the surprise of the Court, the order passed by the appellate authority is even more detailed than the order of the disciplinary authority. In fact, the Court cannot omit to record that hardly any detailed consideration of such kind is provided by a disciplinary authority, which has been done in the present case. In fact, the appellate authority's

order is in a much greater detail and virtually every objection of the Petitioner taken in his appeal has been met sequentially.

10. In totality therefore, the allegations being serious and that too in relation to dealing with the confidence of the customers and the reputation of the Bank, no leeway can be provided to an employee who is not honest to his duty or to his customers. The fiduciary relationship which is maintained between the Bank and its customers cannot be allowed to be breached and the banking industry being a sensitive industry, if faith and trust in the fair dealing of the Bank becomes a suspect, survival of the Bank in question itself will be an issue for the Management.
11. In totality therefore, I am satisfied that the Respondent-Bank has not committed any breach either of procedure or principle relating to conduct of the disciplinary proceedings against the Petitioner. In fact, it is one of those cases keeping in mind the conduct of the Petitioner, the punishment in question cannot be said to be unwarranted.
12. The writ application therefore stands dismissed being devoid of merit.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE