IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17942 of 2019

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Nagendra Sharma Son of Subhansh Singh, resident of Mohalla- Maurya Vihar Colony, Walmi Canal Road, near Devi Asthan, Police Station- Phulwarisharif, District- Patna.

... ... Petitioner/s

Versus

1. The Managing Director and CEO, Bank of India C-5, G- Block BKC, Bandra Kurla Complex, Bandra (East), Mumbai, Maharastra- 51.
2. The Zonal Manager-cum-Appellate Authority Bank of India, Patna Zone, Chanakya Place 1st. Floor, Birchand Patel Marg, Patna.
3. The Assistant General Manager, Bank of India-cum-Disciplinary Authority, Zonal Office, Patna Zone Chanakya Tower, R-Block, Patna.
4. The General Manager, Bank of India, HRD, IR Division, Star House, C-5, G-Block, Bandra Kurla Complex, Bandra (East) Mumbai- 51.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh, Adv.
		Mr. Kundan Kumar Sinha, Adv.
For the Respondent/s	:	Mr. Rupak Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 28-05-2020

This writ application has been filed seeking quashing of an order dated 13.02.2019, issued under the signature of the Assistant General Manager, Zonal Office, Patna Zone-cum-Disciplinary Authority, Bank of India (hereinafter referred to as 'the Bank') whereby the Disciplinary Authority has imposed major penalty of "dismissal which shall ordinarily be a disqualification for future employment" in terms of Regulation 4(j) of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 for the acts of his misconduct. It is noteworthy that earlier, the disciplinary authority had imposed upon him, the same punishment by an order dated 06.12.2000 legality of which he had challenged before this Court giving rise to CWJC No. 11938 of 2003. The said writ application was allowed by this Court by an order dated 23.08.2018 on applying the principle of parity of punishment on identical charges proved against co-delinquent, as laid down by the Supreme Court in case of ***Rajendra Yadav vs. State of M.P. & others*** reported in ***(2013) 3 SCC 73***. The writ application was allowed in following terms :-

> *"5. Having heard the learned Senior Counsel for the petitioner and the learned counsel for the respondents as well as having gone through the materials on record, this Court finds that the charges/ incident of misconduct is one and the same as far as the petitioner and the said Uma Shankar Diwedi are concerned, hence considering the law laid down by the Hon'ble Apex Court in the case of **Rajendra Yadav (supra)**, this Court is of the opinion that parity among co-delinquents has to be maintained when punishment is being imposed and the punishment cannot be disproportionate while comparing the involvement of the co-delinquents who are parties to the same transaction or incident.*
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> *6. For the reasons mentioned hereinabove as also in view of the law laid down by the Hon'ble Apex Court, I find that since the petitioner herein and the aforesaid Uma Shankar Diwedi were leveled with the allegations arising out of the same transaction/ incident of misconduct, parity ought to have been maintained in the matter of inflicting punishment. In such view of the matter,*

> *the appellate order/ order of review dated 30.09.2002 and the original order of punishment of dismissal dated 06.12.2000 are set aside and the matter is remitted back to the disciplinary authority to consider the entire matter as far as the quantum of punishment is concerned, in light of the judgment rendered by the Hon'ble Apex Court in the case of* ***Rajendra Yadav (supra)****. It is needless to state that the petitioner will be at liberty to raise all other issues / contentions for the purposes of assailing the impugned order dated 06.12.2000 and 30.09.2002 at appropriate moment, if need be."*

2. The correctness of the finding recorded by a coordinate Bench of this Court to the aforesaid effect in the order dated 23.08.2018 was not questioned by the Bank. It is easily discernible from the findings recorded by the coordinate Bench of this Court in paragraphs 5 and 6 that in the Court's opinion, the charges/ incidents of misconduct were found to be one and the same as far as the petitioner and the co-delinquent Uma Shankar Diwedi was concerned. It was accordingly opined that the parity among the co-delinquents had to be maintained when punishment was being imposed. It was reiterated in the order of this Court dated 23.08.2018, passed in CWJC No. 11938 of 2003 that since the petitioner and co-delinquent Uma Shankar Diwedi were levelled with the allegations arising out of same transaction/ incident of misconduct, parity had to be maintained in the matter

of inflicting punishment. The Court, accordingly, set aside the original order of punishment, passed against the petitioner dated 06.12.2000, the appellate order and the order of review. After having recorded specific finding to the effect that the charges against the petitioner and the co-delinquent Uma Shankar Diwedi were identical, remitted the matter back to the disciplinary authority to re-consider the entire matter as far as the quantum of punishment was concerned, in the light of the judgment rendered in case of ***Rajendra Yadav*** (supra). It is in the light of the matter having been remanded by this Court to the disciplinary authority by order dated 23.08.2018, passed in CWJC No. 11938 of 2003, that the impugned order dated 13.02.2019 has been passed by the disciplinary authority, which is under challenge in the present writ application.

3. Before I proceed further, I must refer to an admitted fact that co-delinquent Uma Shankar Diwedi has been imposed punishment of “permanent withdrawal of Special Allowance of Cashier-in-Charge” in terms of Para 21(iv)(e) of the Bipartite Settlement dated 14.02.1995, vide the Punishment order bearing Ref.No. RO:GYA:IR:99-00:453 dated 31.03.2000, though in the order of this Court dated 23.08.2018 it has been recorded, on the

basis of submission made on behalf of the petitioner that Uma Shankar Diwedi had been exonerated of the charges.

4. Be that as it may, the finding recorded by the coordinate Bench of this Court in the order dated 23.08.2018 to the extent that the charges/ incident of misconduct against the petitioner and co-delinquent Uma Shankar Diwedi were same, has attained its finality.

5. The petitioner was holding the post of Ex-Manager (JM-1), Bahadurpur branch of the Bank when the proceeding was initiated against him and co-delinquent Uma Shankar Diwedi, who too was posted in the same branch. The charges, which were framed against the petitioner and co-delinquent Uma Shankar Diwedi have been taken note of extensively by the coordinate Bench of this Court in the order dated 23.08.2018 in paragraph 2, which are as under :-

> "2. The brief facts of the case are that the disciplinary authority had initiated a departmental proceeding against the petitioner herein and articles of charges were served on the petitioner vide letter dated 24.07.1998. At this juncture, it would be appropriate to reproduce the articles of charges hereinbelow : -
>
> > During your tenure as Manager at Bank of India, Bahadurpur branch during the period from 23.11.1992 to 17.06.1996, the acts of misconduct as are mentioned hereinbelow are alleged to have been committed by you:
> >
> > ***Article of Charge-I***

That you sanctioned/ disbursed loans in 30 accounts under IRDP for poultry business without ensuring the end use of funds. You also did not conduct any post sanction inspection to ensure that the funds were utilized for the purpose they were disbursed.

Article of Charge-II

That you made disbursement of part of the loan amount in the aforesaid 30 accounts by transfer to the respective SB Accounts of the borrowers without ensuring corresponding entry in the pass books kept unauthorisedly in the branch and in a number of accounts, you allowed withdrawal of amount by Sri U.S. Diwedi, the Cashier of the Branch using blank withdrawal forms bearing the thumb impression/ signature of the borrowers unauthorisedly kept along with the loan documents in the branch which were fraudulently withdrawn as the borrowers have no knowledge of such withdrawals and have neither withdrawn or received any amount in cash.

Article of Charge-III

That you unauthorisedly and in gross violation of bank's norms kept the pass books of the borrowers and blank withdrawal forms, credit and debit vouchers bearing the thumb impression/ signature of the borrowers alongwith the loan documents in the branch for making fraudulent withdrawals from time to time in connivance with the clerk cashier Sri Uma Shankar Diwedi of the Branch.

The petitioner had participated in the inquiry, whereafter the inquiry Officer has submitted his inquiry report dated 30.05.2000, whereby and whereunder all the three charges were found to have been proved. Thereafter, the disciplinary authority had forwarded the findings of the Inquiry Officer (inquiry report) vide letter dated 14.07.2000, seeking the response of the petitioner, which was originally sent in a hand-written manner vide letter dated 01.06.2000. The petitioner had submitted his detailed representation on the inquiry findings and thereafter, the order of punishment, dismissing the petitioner from his services, has been passed vide order dated 06.12.2000. The petitioner has filed an appeal which has also been dismissed by an order dated 30.09.2002.

3. The learned Senior counsel appearing for the petitioner has raised a short issue for consideration to the effect that the charges leveled against the petitioner as also the charges leveled against one Sri Uma Shankar Diwedi, Cashier, posted at the same place where the petitioner was posted and in connection whereof the charges have been leveled, arise out of the same and similar incident of misconduct. In this regard, the learned Senior counsel has referred to the charges leveled against the said Uma Shankar Diwedi which are reproduced hereinbelow :-

Charge no. 1

That you in violation of Bank norms contacted the Borrowers in respect of 30 IRDP loan account for poultry Business sanctioned by the manager, Shri Nagendra Sharma either yourself or through a daily wages staff Sri manraj Thakur and obtained their signatures/ thumb impression on the loan application, S/B accounts opening cards, Blank S/B withdrawal forms and credit. Debit vouchers. The blank S/B withdrawal forms and debit/ credit vouchers bearing the signature/ thumb impression of the borrowers were kept along with loan documents in the branch in gross violation of Bank's norms.

Charge no. 2

That you unauthorisely used the blank S/B withdrawal forms bearing the signature/ thumb impression of the borrowers to withdraw amounts transfer to their respective saving accounts as part disbursement of the loan in the aforesaid loan accounts without their knowledge as the amounts were not withdrawn/ received by them. You also made respective entries in the ledger and pass books of the borrowers which were also unauthorisedly and in gross violation of bank's norms kept in the branch. The details of unauthorized withdrawals made by you are mentioned hereinbelow :-

The details of unauthorized withdrawals made by you are mentioned hereinbelow :-

Sl.No.	Name of the borrowers	Amount withdrawn	Date
1.	Sri Naresh Paswan	Rs. 3200/-	14.05.1996
2.	Sri Manoj Paswan	Rs. 2435/-	28.05.1996
3.	Sri Bhagwan Paswan	Rs. 3200/-	14.05.1996
4.	Smt. Renu Devi	Rs. 3200/-	14.05.1996
5.	Smt. Itwari Devi	Rs. 3200/-	26.03.1996
6.	Smt. Ganauri Devi	Rs. 3200/-	23.04.1996
7.	Sri Nathun Paswan	Rs. 3200/-	26.03.1996
8.	Sri Mahangu Paswan	Rs. 3200/-	26.03.1996
9.	Sri Lakhan Paswan	Rs. 3200/-	14.05.1996
10.	Sri Ramdriksha Paswan	Rs. 3200/-	26.03.1996
11.	Sri Dinesh Paswan	Rs. 3200/-	04.04.1996
12.	Sri Dhuri Paswan	Rs. 3200/- Rs. 885/-	09.04.1996 08.05.1996
13.	Sri Sudarshan Paswan	Rs. 3200/- Rs. 885/-	09.04.1996 28.05.1996
14.	Smt. Tetri Devi	Rs. 3200/-	09.04.1996
15.	Sri Prabhu Paswan	Rs. 885/-	28.05.1996
16.	Sri Satasi Paswan	Rs. 2435/-	28.05.1996
17.	Smt. Renu Paswan	Rs. 2435/-	28.05.1996
18.	Smt. Phulbadan Devi	Rs. 2435/-	28.05.1996
19.	Sri Deo Kr. Paswan	Rs. 2435/-	28.05.1996

20.	Sri Khakan Paswan	Rs. 2435/-	28.05.1996
21.	Smt. Asha Devi	Rs. 2435/-	28.05.1996
22.	Sri Udal Paswal	Rs. 2435/-	28.05.1996
23.	Sri Budhdeo Paswan	Rs. 2435/-	28.05.1996
24.	Sri Jagarnath Paswan	Rs. 2435/-	28.05.1996

6. This Court, in the aforesaid background, is not required to revisit the aspect of parity of charges against the petitioner *vis-a-vis* the co-delinquent Uma Shankar Diwedi, in view of clear finding recorded by the coordinate Bench of this Court.

7. The challenge to the impugned order is mainly on the ground that the disciplinary authority has acted in complete disregard to the findings recorded by a coordinate Bench of this court in its order dated 23.08.2018, passed in CWJC No. 11938 of 2003.

8. A counter affidavit has been filed on behalf of the Bank justifying the impugned decision. In the counter affidavit, an attempt has been made to distinguish the case of the petitioner and co-delinquent Uma Shankar Diwedi. In paragraph-14, it has been stated that whereas the petitioner was charged with the major allegation of sanctioning and disbursing loans in 30 accounts under Integrated Rural Development Program (IRDP) the co-delinquent Uma Shankar Diwedi was charged with the allegation

of contacting the borrowers and obtaining their signatures and thumb impressions on the loan applications. Sri Uma Shankar Diwedi was charged with the allegation of using Bank SB withdrawal forms bearing the signatures/ thumb impressions of the borrowers to withdraw amounts transferred to their respective SB accounts as part of disbursement of the loan, whereas the petitioner was charged with the allegations of allowing such unauthorised withdrawals, being controlling authority of the branch. It is the case of the Bank that the petitioner was an officer holding the post of Branch Manager who was bestowed upon supervisory role to control the staff working under him, whereas Uma Shankar Diwedi was placed under the petitioner's control whose action of omission and commission was supposed to be monitored by the petitioner. It is the case of the Bank that the petitioner has not been claiming his innocence in the matter rather he has been seeking equal treatment, at par with Sri Uma Shankar Diwedi, which is untenable for the aforesaid reasons.

9. I have heard Mr. Aditya Narayan Singh, learned counsel appearing on behalf of the petitioner and Mr. Rupak Kumar, learned counsel representing the Bank.

10. Mr. Singh, learned counsel for the petitioner has vehemently argued that the impugned order amounts to

overreaching the findings already recorded by this Court in the order dated 23.08.2018, passed in CWJC No. 11938 of 2003, which was filed by the petitioner. His short submission is that in no circumstance the disciplinary authority could have gone beyond and contrary to the findings recorded by this Court in the earlier writ proceeding. He has placed reliance on Supreme Court's decision in case of ***Rajendra Yadav*** (supra) in support of his plea and has contended that no punishment graver than that imposed on co-delinquent Uma Shankar Diwedi can be imposed on the petitioner.

11. Mr. Rupak Kumar, learned counsel appearing on behalf of the Bank, on the other hand, has submitted that this application should not be entertained as the petitioner has an alternative remedy of appeal against the impugned order before the appellate authority. I must record here that the said submission was rejected by this Court by an order dated 28.02.2020, keeping in view the nature of impugned order passed by the disciplinary authority. He has made his submissions on the basis of the averments made in the counter affidavit to justify the impugned order passed by the disciplinary authority.

12. I have carefully examined the pleadings and other materials on records and I have given my anxious consideration to

rival submissions made on behalf of the parties. I have already reproduced the findings recorded by a coordinate Bench of this court in the earlier round of litigation in CWJC No. 11938 of 2003. I find substance in submission made on behalf of the petitioner that the disciplinary authority had no occasion to go into the matter as to whether there were parity of proved charges of misconduct against the petitioner and co-delinquent or not. The disciplinary authority did not have the jurisdiction to review the findings recorded by this Court in the writ proceeding while complying with the said order of this Court. The disciplinary authority was simply required to implement the order of this Court by treating the allegations/ charges arising out of the same transaction to be of equal gravity against the petitioner and co-delinquent Uma Shankar Diwedi, for the purpose of imposition of punishment. The disciplinary authority, apparently, acted in breach of the earlier order of this Court dated 23.08.2018. This is to be noted that a contempt petition was filed by the petitioner giving rise to MJC No. 918 of 2019 which was, subsequently, withdrawn by an order dated 17.07.2019 with a liberty to challenge the impugned order dated 13.02.2019.

13. The impugned order, in my view, therefore, is unsustainable and requires interference by this Court. Accordingly,

the impugned order dated 13.02.2019 is hereby quashed. Since there is clear finding already recorded by a coordinate Bench of this Court that the allegation against this petitioner and co-delinquent Uma Shankar Diwedi are identical, parity in the matter of punishment will have to be maintained and the petitioner cannot be saddled with a graver punishment than the one imposed on co-delinquent Uma Shankar Diwedi.

14. A question now arises as to whether the matter should be again remanded back to the disciplinary authority for passing an order afresh on the quantum of punishment. For the said purpose, it would be noteworthy to refer to a subsequent decision of the Supreme Court in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh*** reported in ***(2013)12 SCC 372*** in which upon analysing the law laid down in case of ***Rajendra Yadav*** (supra), the Supreme Court summarised the scope of judicial review *vis-a-vis* quantum of punishment on the charge of misconduct in a disciplinary proceeding and laid down the law in paragraph 19 as follows :

> *"19. The principles discussed above can be summed up and summarized as follows:*
>
> *19.1 When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*

19.2 The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court.

19.4 Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5 The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

15. The principles discussed above can be summed up and it is clear from the law propounded by the Supreme Court in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh*** (supra) that when the charge of misconduct is proved in an inquiry, the quantum of punishment to be imposed is essentially the domain of the departmental authorities and the Courts exercising power of judicial review cannot assume function of disciplinary/ departmental authorities for deciding quantum of punishment. The nature of penalty to be awarded is a function which is exclusively within the jurisdiction of the competent authority. Only in cases where penalty imposed by the disciplinary authority is found to be shocking to the conscience of the Court, limited judicial review under Article 226 or 32 of the Constitution of India is available.

16. It can be easily culled out from what has been held in definite terms in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh (supra)*** that even when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action for a Court exercising power of judicial review would be to remit the matter back to the disciplinary authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in a particular case, (see

paragraph 19.4, ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh***).

17. Paragraph 19.5 of the Supreme Court's decision in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh*** (supra), however, carves out an exception to the principle stated in paragraph 19.4 and states that for those cases where co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charge. It was emphasised that there must be complete parity between the two, not in respect of nature of charge but subsequent conduct as well after service of charge-sheet in the two cases.

18. The aforesaid proposition of law propounded in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh*** (supra) has subsequently been followed by the Supreme Court in case of ***Naresh Chandra Bhardwaj vs. Bank of India and others*** reported in ***(2019) 15 SCC 786***. The Supreme Court in case of ***Naresh Chandra Bhardwaj*** (supra), finding parity in charges, relying on the decision in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh*** (supra) held in paragraphs 13 to 15 as follows :-

> *13. It is difficult for us to accept that there is any difference in the conduct of the three officers as would justify this differentiation in punishment. The most important fact in*

this behalf to notice is that as per the counter affidavit submitted by the Respondents, in their own wisdom they have agreed to grant compassionate allowance to the appellant, which is 2/3rd of the full pension as would be payable to him had the punishment of removal from service not been imposed on him. What is also important to note is that it is further submitted in the same paragraph 8.2 that even if the punishment is modified to compulsory retirement the appellant would receive 2/3rd of the full pension which is equivalent to the 2/3rd of the full pension as received for compassionate allowance. The appellant has been given the maximum benefit under Regulations 31 & 33 of the Pension Regulations, 1995 dealing with compassionate allowance.

> *8.2....It is further submitted that even in case a punishment of "removal from service" is imposed upon the petitioner is modified to that of "compulsory retirement", he would receive 2/3rd of the full pension, which is equivalent to the 2/3rd of full pension which he is receiving at present as a "compassionate allowance."*

14. We fail to appreciate that once there is no financial difference and the role is practically identical, why the respondents hesitated themselves to convert the punishment inflicted on the appellant from one of "removal from service which shall not be disqualification for future employment" to "compulsory retirement." The only aspect is the nature of punishment which appears to tar the appellant more than the other two officers without any financial implication for the respondent Bank.

> *15. In the aforesaid facts & circumstances, we are, thus, inclined to accept the plea of the appellant to convert his punishment in terms aforesaid to one of "compulsory retirement."*

19. In such view of the matter, applying the principle laid down by the Supreme Court in case of ***Lucknow Kshetriya Gramin Bank vs. Rajendra Singh*** (supra) in paragraph 19.5, I direct the disciplinary authority to impose upon the petitioner the same punishment, as has been imposed on co-delinquent Uma Shankar Diwedi since there is already a conclusive finding recorded by this Court on parity of allegation against the two, arising out of the same transaction.

20. This writ application is accordingly allowed with a cost of Rs. 10,000=00 to be paid by the Bank to the petitioner. The respondents shall be obliged to substitute the same punishment which was imposed on Uma Shankar Diwedi, in place of punishment earlier imposed against the petitioner from the date, the same was originally imposed. The Bank will be required to proceed thereafter for the purpose of determination of entitlements of the petitioner, accordingly.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29 .05.2020
Transmission Date	NA