

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25672 of 2013

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Narendra Kumar Sinha, son of late Bipin Bihari Prasad Sinha, Resident of Pal
Nagar, Fatehpur, P.O., P.S. And District - Siwan.

... .. Petitioner

Versus

1. Uttar Bihar Gramin Bank, through its Chairman, having its Head Office at Kalambag Road, Muzaffarpur.
2. The Chairman-cum- the Disciplinary Authority, Uttar Bihar Gramin Bank, H.O. Kalambagh Road, Muzaffarpur.
3. The Board Of Directors-cum-The Appellate Authority, Uttar Bihar Gramin Bank, H.O. Kalambagh Road, Muzaffarpur.
4. The General Manager, Uttar Bihar Gramin Bank, H.O. Kalambagh Rod, Muzaffarpur.
5. The Enquiry Officer, Uttar Bihar Gramin Bank, H.O. Kalambagh Road, Muzaffarpur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Senior Advocate Mr. Ram Binod Singh, Advocate Mr. Bipin Kumar Singh, Advocate Mr. Gyan Prakash, Advocate Mr. Purushottam Kumar Jha, Advocate
For the Respondents	:	Mr. S.D. Sanjay, Senior Advocate Mr. Alok Kumar Agrawal, Advocate Ms. Priya Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 01-10-2021

The matter has been taken up for hearing on-line
because of COVID-19 pandemic restrictions.

2. The petitioner is aggrieved by an order dated
16.04.2011 (Annexure-12) passed by the Chairman-cum-



Disciplinary Authority, Uttar Bihar Gramin Bank, Muzaffarpur, whereby he has been removed from the service of the Bank by way of punishment. His appeal has been dismissed by the Appellate Authority vide an order dated 06.07.2013, which is also under challenge. The petitioner was posted as an officer at the relevant point of time at Jamo Bazar Branch of Siwan Kshetriya Gramin Bank. The said Siwan Khestriya Gramin Bank has since merged with the respondent, Uttar Bihar Gramin Bank, Muzaffarpur.

3. Before coming to the merits of the case, a brief outline of the history of the case as to how this matter has placed before this Bench on remand by the Supreme Court need to be taken note of, at the outset. The petitioner was proceeded departmentally for four charges of misconduct. The Fourth charge was found 'not proved' in the departmental enquiry as reported by the Inquiry Officer in his report. He, however, found three other charges to have been 'proved' against the petitioner. Based on the findings recorded by the Inquiry Officer, the Disciplinary Authority imposed punishment of removal from the service by the impugned order dated 16.04.2011. The fourth charge has, thus, lost its significance for the purpose of present adjudication. The other three charges levelled against the



petitioner were as under:-

“(Charge No. (1) :-

Sri Narendra Kumar Sinha, Officer misled Branch Manager and other officers/employees posted at Jamo Market Branch after proving them false information that he has been permitted by the undersigned to visit Head Office constantly for review of the progress of matching of balance, whereas Sri Sinha has met the undersigned in this regard at Head Office only one or two times. In this way, you have remained absent from the Branch and misled your higher officials by supplying false information. A written letter to this effect has been given by officers/ employees posted at Jamo Market Branch.

This act of Sri Sinha is violation of Section “16” of Siwan Regional Rural Bank officer/employees Service Regulation, 2001 and punishable offence under Section “36”.

Charge No. - (2) :-

In course of matching the balance of domestic savings Accounts in Jamo Market Branch, Sri Sinha has been taking away/bringing back savings Accounts, ledger, deposit register, withdrawal register, supplementary register and vouchers and balance book relating to that to/ from his residence at



Siwan. The information to this effect has been submitted to the undersigned by officer/ employee posted at the Branch, Sri Harinath Ram, Sri Ram Sagar Sharma, Sri Kumar Sawalia Prasad Giri, Sri Fuldeo Singh and Sri Anil Kumar Ambastha through a letter signed by them.

This act of Sri Sinha is gross violation of Sections “17” and “18” of Siwan Regional Rural Bank officer/employee Service Regulation, 2001 and punishable offence under Section “38”.

Charge No. - (3) :-

This wrong information was being given by Sri Sinha to officers/ employees posted in the Branch that the undersigned has assured them that they would be posted at their desired place, whenever Sri Sinha wants, which is absolutely far from truth.

In this way Sri Sinha has resorted to falsehood in order to browbeat officer/employees posted at Jamo Market Branch and the information to this effect has been given by the employees posted in the Branch. This act of Sri Sinha is violation of Section “16” of Siwan Regional Rural Bank Officer/Employees Service Regulation, 2001 and punishable offence



under Section “38”.

4. This writ petition was earlier partly allowed by a co-ordinate Bench of this Court by an order dated 26.09.2014. While allowing this writ application, this Court specifically held that there was no legal evidence to justify the finding apropos charge no.2. In respect of other two charges, it was urged on behalf of the petitioner before the co-ordinate Bench that there were no cogent materials produced in support of the said charges and even assuming them to be true against him, they would not constitute a misconduct within the meaning of Clauses 16, 17, 18 and 19 of the Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (for short “2010 Regulations”). An alternative submission was made that in any case, the punishment of removal from the service was disproportionate to the alleged misconduct against the petitioner. The co-ordinate Bench of this Court broadly agreed with the said submission made on behalf of the petitioner that the punishment of removal was not commensurate with the gravity of the accusation as charge no.2 had already been held not proved. Having held so, the coordinate Bench partly allowed the writ petition in the following terms:-

“This takes me to the first submission of the petitioner that the charge do not constitute



misconduct and there was no legal evidence to substantiate the charge without expressing any opinion, I refer the matter to the Appellate authority to rehear the matter in view of the contentions of petitioner noticed in the foregoing paragraphs and pass fresh order within three months from the date of receipt of a copy of the order as the matter is of 2002. The order of removal passed by the Disciplinary Authority and Appellate authority are set aside. The petitioner would be reinstated in service. The matter with respect to the consequent benefits including the back wages to be decided by respondents expeditiously, preferably within the said period. With the aforesaid liberty, the writ petition is allowed to the extent mentioned above.”

5. Against the said decision of the co-ordinate Bench dated 26.09.2014, two appeals were preferred under Letters Patent of this Court giving rise to L.P.A. Nos. 96 of 2015 and 764 of 2015 by the Bank and the petitioner. The Division Bench of this Court, by an order dated 06.09.2017, dismissed L.P.A. No. 96 of 2015 with minor modification in the following terms:-

“However, in our view, the appeal has to be dismissed with one modification. Since the orders passed by the disciplinary authority as



well as the appellate authority both have been set aside, the matter has to be remanded to the disciplinary authority in place of the appellate authority. The disciplinary authority itself has to take a fresh decision with respect to Charge Nos. 1 and 3 and reinstatement of the petitioner would be the subject to result of the decision taken by the disciplinary authority. Thereafter, the aggrieved parties may have remedy of preferring appeal against the order passed by the disciplinary authority.”

6. Dealing with the L.P.A. No. 764 of 2015 preferred by the petitioner, the Division Bench observed that since the learned Single Judge had found charge no.2 ‘not proved’ and there was no final opinion expressed in respect of other two charges, there was no infirmity in the order, whereby the matter was remanded back to the concerned authority. However, since the matter was remitted to the disciplinary authority in place of appellate authority by virtue of the order passed in L.P.A. No. 96 of 2015, there was no requirement of passing any further order in the L.P.A. No.764 of 2015, the Division Bench observed. The Division Bench further noticed that since the impugned order of removal was set aside by the learned Single Judge, consequent upon which, the petitioner was to be reinstated, the question of payment of back-wages and



consequential benefits would depend upon the order to be passed by the disciplinary authority; which authority would be required to take a final view of the matter in respect of charge nos. 1 and 3, in accordance with law, without being prejudiced by the views expressed by the learned Single Judge.

7. The said decision of the Division Bench dated 30.11.2017 became subject matter of challenge before the Supreme Court with Bank and the petitioner both filing Special Leave Petitions. The Special Leave Petition filed by the Bank gave rise to S.L.P. (C) No.4565 of 2018 and that of the petitioner S.L.P. (C) No. 27063-27064 of 2018 corresponding to Civil Appeal No. 10180 of 2018 (The Uttar Bihar Gramin Bank & Ors. vs. Narendra Kumar Sinha) and Civil Appeal No. 10182-10183 of 2018 (Narendra Kumar Sinha vs. The Uttar Bihar Gramin Bank & Ors.) respectively. The appeal preferred by the Uttar Bihar Gramin Bank was allowed by the Supreme Court by a judgment and order dated 03.10.2018. Paragraph nos. 11 to 19 of the said judgment and order are relevant, which read as under:-

“11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to set aside the impugned order as also the order of the Single Judge and



remand the case to the Single Judge for deciding the writ petition on merits.

- 12. In our considered opinion, the Single Judge erred in remanding the case to the Appellate Authority. It is for the reason that the Single Judge confined his examination only to charge No. 2 and held the same as not proved whereas he failed to examine the case so far as charge Nos. 1 and 3 are concerned.*
- 13. It should have been seen that so far as charge Nos. 1 and 3 are concerned, both were held proved against the employee in the departmental enquiry.*
- 14. In these circumstances, the Single Judge was under legal obligation to examine each charge independently and then he should have recorded his findings on all the charges in accordance with law. It was, however, not done.*
- 15. So far as the Division Bench is concerned, they having noticed the aforesaid error committed by the Single Judge instead of rectifying the same yet committed another error by remanding the case to the disciplinary authority instead of remanding it to the Single Judge for deciding the writ petition on merits. Remand of the case to disciplinary authority by the Division Bench in the facts of this case, in our view, was, therefore, unjustified in the light of reasons mentioned above.*
- 16. We are, therefore, unable to agree with the reasoning and the conclusion arrived at by the*



Single Judge and also the Division Bench due to the aforementioned reasons and, therefore, set aside both the orders.

17. The appeal filed by the appellant-Bank thus succeeds and is accordingly allowed. Impugned order and the order of the Single Judge are hereby set aside. The writ petition (C.W.J.C. No.25672/2013) filed by the respondent employee is accordingly restored to its original file.

18. The Single Judge will now decide the writ petition on merits in accordance with law uninfluenced by any observations made earlier by the Single Judge and the Division Bench in their respective orders passed earlier and also by this Court.

19. Since the matter is quite old, we request the Single Judge to decide the writ petition as expeditiously as possible preferably within a period of six months.”

8. The appeal preferred by the petitioner was disposed of in the light of the judgment and order passed in the appeal preferred by the Bank.

9. In view of the Supreme Court's decision dated 03.10.2018, the matter has been placed before me for hearing and disposal.

10. I have heard Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the petitioner and Mr.



S.D. Sanjay, learned Senior Counsel appearing on behalf of the Bank. They have addressed this Court at length.

11. Mr. Bindhyachal Singh, learned Senior counsel appearing on behalf of the petitioner, has submitted that the findings recorded by the co-ordinate Bench in the order dated 26.09.2014 passed in this case to the effect that there was no cogent evidence adduced during departmental enquiry in support of the charge no.2 has not been interfered with by the Division Bench and the same has rather been affirmed. The Supreme Court, though, noticed the said finding of the learned Single Judge but has found no reason to interfere with the same. According to him, the discussions in the Supreme Court's order is confined to issue that the learned Single Judge had failed to examine the case so far as charges no. 1 and 3 are concerned. He has, accordingly, submitted that this Court, in the present proceeding, need not go into charge no.2 in respect of which the finding recorded by the learned Single Judge has attained finality and become conclusive.

12. Mr. S.D. Sanjay, learned Senior counsel appearing on behalf of the Bank, on the other hand, has submitted that in view of clear observation made by the Supreme Court in paragraph no.14 of its decision, this Court



needs to examine each charge independently and record findings on all the charges in accordance with law.

13. I will address rival contention on this aspect, later. Basic facts of the case are being taken note of first.

14. It is the petitioner's case as asserted in the writ application that in compliance of an order of the head office of the Bank dated 12.09.2001, the Branch Manager of the Branch had issued an office order on 15.09.2001 whereby, the petitioner was assigned the work of balancing, 'GLB' updating and uploading of profit and loss account etc. It was further ordered that one Sawaliya Prasad Giri, an employee of the Branch, would help the petitioner in updating GLB and Anil Kumar Ambastha and Ram Sagar Sharma would help him in the work of balancing of accounts and updating of account as was assigned to him. It is the petitioner's case that while doing the balancing work, he noticed certain acts of fraud in Account No.7119 and 7365 in Ledger No. 35 and 36 and accordingly, he wrote a letter dated 22.03.2002 (Annexure-2) to the Chairman of the Bank in that connection.

15. Further, under the orders of the Chairman of the erstwhile Siwan Khestriya Gramin Bank, the Audit Inspector of the Bank had conducted an inspection of the Branch on



18.03.2002, whereupon he had detected grave financial irregularities and submitted his report in this regard on 21.03.2002. In his report dated 21.03.2002, the Audit Inspector named Mr. Krishna Deo Ram (Officer), Mr. Pankaj Kumar (Clerk), Mr. Ram Sagar Sharma (Clerk), Mr. Hari Nath Ram (Officer), Mr. Anil Kumar Ambastha and Mr. J.P. Singh (Branch Manager) who appeared to be instrumental in relation to the fraud committed in SB Account No. 6083, 7119 and 7365. A subsequent inspection was carried out by the General Manager of the erstwhile Siwan Khestriya Gramin Bank on 26.03.2002 and 12.04.2002, who submitted his inspection reports to the Chairman of the Bank on 27.03.2002 and 13.04.2002. The said inspection reports have been brought on record by way of Annexure-4 to the writ application. It is the petitioner's case the said inspection report would go to suggest the involvement of the Branch Manager of the Bank, Jai Prakash Singh and other officers/employees namely, Ram Sagar Sharma, Anil Kumar Ambastha and Pankaj Kumar.

16. On 31.05.2002, the Chairman of the Bank issued a letter to the petitioner to submit an explanation in respect of certain allegations against him. In the said letter dated 31.05.2002, the Chairman of the Bank mentioned that the



petitioner remained absent from the Branch by misleading the officers/employees of the Branch and on the pretext that he had been authorized by the head office, he carried the SB account register and other registers to his residence for the purpose of balancing of accounts. It was also alleged that the petitioner used to throw his weight and misrepresent before the officers/employees posted at the Branch that he was capable of getting them posted at any place of his choice exercising his influence. Further, allegedly he would tell the officers/employees posted at the Branch that he had been asked by the Chairman of the Bank to meet him for review of the balancing of the accounts of the Branch.

17. On the basis of the aforesaid allegation, the Chairman was of the view that the petitioner was not taking due interest in discharge of his official work and was misleading the employees posted at the Branch, which constituted misconduct within the meaning of Clauses 16, 17 and 19 of the Siwan Khestriya Regional Rural Bank (Officers and Employees) Service Regulations, 2001. The petitioner was asked to submit his explanation, which he did through a letter dated 15.07.2002 addressed to the Chairman of the Bank. He denied the allegations mentioned in the Chairman's letter dated 31.05.2002



and asserted that since he had detected the fraud committed in the Branch, the Branch Manager and other employees posted at the Branch hatched up a conspiracy and were making false allegations against him. He denied to have ever told any officers/ employees posted at the Branch that he could get them posted at a place of his choice. He also denied that he had ever left the Branch unauthorizedly. He also mentioned that the matching of balance in respect of saving bank account was pending in the Branch since October, 2000 which he carried out with expedition, during which he detected the frauds committed in the Branch.

18. Being dissatisfied with the explanation submitted by the petitioner, a charge-sheet was drawn and issued containing four charges, three of which have been quoted hereinabove, through letter dated 27.12.2002 issued under the signature of the Disciplinary Authority. The acts alleged against the petitioner in the charge-sheet according to the Disciplinary Authority, constituted a gross misconduct within the meaning of Clauses 16, 17, 18 and 19 of the Regulations. An Inquiry Officer and a Presenting Officer were appointed for conducting the departmental enquiry. The enquiry was conducted in eight sittings and the final hearing was concluded on 09.03.2006. The



Presenting Officer submitted his written argument to the Inquiry Officer on 18.03.2006. The petitioner submitted his objection/ written argument before the Inquiry Officer on 05.10.2006. The Inquiry Officer submitted his report on 27.10.2006 and recorded his finding that the charge nos.1, 2 and 3 stood proved, though charge No.4 could not be proved. The copies of the proceedings of the departmental enquiry and the enquiry report have been brought on record by way of Annexures- 9 and 10 to the writ application. A copy of the enquiry report was supplied to the petitioner by the Disciplinary Authority seeking his comments thereon. The petitioner submitted his comments on 12.03.2007 (Annexure-11), contesting the findings recorded by the Inquiry Officer, on various grounds including the ground that there was no cogent evidence adduced to substantiate the charges framed against him and that the Inquiry Officer wrongly relied on Management's Exhibits no. 3, 4 and 5, which were apparently created by those officers/employees of the Bank who were found responsible in the fraud detected in the Branch. It was the specific case of the petitioner that the said documents were prepared by the staff members in their defence subsequent to detection of fraud in the Branch. Following was the charge-wise explanation submitted by the petitioner on the report of the



Inquiry Officer.

“Charge No.1

Here the E.O. has only relied upon the evidence MEX 3, 4 and 5 mention above which are itself not tenable / acceptable as evidence in the eyes of laws. The E.O. did not allow me to produce attendance register as defence exhibit which is the vital document to show presence / absence of the any employee of the office. You will be agree with my view if I would have left office earlier / or came late of absent himself from the branch must be mentioned in the attendance register. In exceptional case it might be left to mark, but in continuity it could not be happened. From the investigation report made by the General Manager & Auditor marked as DEX-4, 5 & 7 did not reveal any such allegation levelled by any staff members of the branch against me during the course of investigation by them which were conducted just after detection of fraud. So the MEX- 3, 5 are the documents prepared by the staff members in their self defence and after thought on which could not be relied upon, whereas the findings of the EO are only based upon these three disputable evidences.

Further the office order DEX-2 for balancing of books was given by the Branch Manager only, then the question did not arise to report to the position of balancing to the chairman other than the person who had issued



the order, “if it would have happened the Branch Manager must have reported the matter to the Chairman earlier also before detection of fraud. As such the findings of the EO are not based on the facts as such I request you to exonerate me from the charge.

Charge No.2

*Again the EO has given his findings based on MEX 3, 4, 5, 7 & 8 not on the facts. The domestic enquiry is the fact finding enquiry and it was the duty of the EO to extract facts from the enquiry substantiate by valid evidence / witness. I was charged that I used to carry on ledgers, vouchers supplementary book, etc. of saving accounts to my residence at Siwan to tally the balance. Here question arises “**Can any staff member carrying on such security items from the branch without permission of the branch manager that too at the distance of more than 25 Km. which grater risks are involved**”. I think neither any staff member will undiare unclose to take such a higher risk without any interest nor branch manager will permit it. Further if I used to carry this security items at my residence at Siwan and when I absent myself from the office on next working day as charged in charge no.1 then how the operation in these ledgers had taken place next working day. Although the branch Manager has accepted in MEX 8 replies to the memo MEX 7 issued to him. But he had accepted in his self defence. What he had accepted could not be*



relied upon on the charges levelled against another staff member. Further as per MEX 5. I was enquired by the police authority who had found me innocent and set free me from the allegations levelled by the staff members against me in MEX 5 which is more evident from the police report (I.G., Muzaffarpur Zone Report Reference No. 65/CR dated 06.02.2006 and Police case diary no. 79 and 80) dated 28.07.2004) which are enclosed herewith for your reference marked as ANNEXURE 1 and 2. The investigation report (DEX- 4, 5 & 7) by the General Manager/ Auditor did not find any such allegation against me. As such I request you please exonerate me from such baseless charge.

Charge No.3

The EO has again relied upon the memo (MEX- 3) issued to the CSO and written statement of the staff members prepared in their self defence (MEX 4, 5 ME 6) who were suspected accused in the fraud case. I was only charged that I used to say in the branch that the chairman had told me to transfer my services to convenient place if I tally the balances of books. Such charge has no meaning and baseless in nature because if I would have been told by the Chairman for my benefit then I would not have disclosed the same before the staff members of the branch for sake of my interest. Since I highlighted the fraud committed in the branch where the involvement of these staff members



were suspected as such they have fabricated a plot to implicate me by writing a MEX 4, 5 & MEX 6 and also to defame me before the higher authority and at the same time to divert the attention of the police authority who were investigating the fraud. Thus the findings of the EO of charge no.3 are not based upon the facts as such I request you Sir to please exonerate me from the charge also.”

19. The Disciplinary Authority recorded his findings charge-wise as under:-

Charge No. 01

“The Inquiring Authority has found the charge as proved. I have also gone through the relevant records available with the bank which were produced in the enquiry and concur with the findings of Inquiring Authority.

Charge No.02

“The Inquiring Authority has found the charge as proved. I have gone through the relevant records available with the bank which were produced in the enquiry and concur with the findings of Inquiring Authority.

Charge No.03

The Inquiring Authority has found the charge as proved. I have also gone through the relevant records available with the bank which were produced in the enquiry and concur with the findings of Inquiring Authority.”

20. The Disciplinary Authority concluded that the



petitioner did not observe the Banking norms, in his own interest. He misled his higher officials as well as the staffs of the Bank. He thereafter, referred to charge-sheet which was earlier issued to the petitioner on 05.07.2001 which had resulted into imposition of punishment vide order dated 24.08.2001. Accordingly, the Disciplinary Authority held the petitioner to be a man of doubtful integrity, not trustworthy and his actions, detrimental to the interest of the Bank, on whom no trust could be reposed in a financial institution like the Bank. After having formed this opinion, the Disciplinary Authority imposed upon the petitioner three distinct punishments in respect of the three charges as under:-

Charge No.01

Reduction of two increments for a period of two years in terms of regulation 39(i)(b)(i) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010. Sri Sinha shall not earn increments of pay during the period of such reduction.

Charge No.02

Removal from service which shall not be a disqualification for future employment in terms of regulation 39(i)(b)(iv) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010.

Charge No. 03

Reduction of two increments for a period of two



years in terms of regulation 39(i)(b)(i) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010. Sri Sinha shall not earn increments of pay during the period of such reduction”.

21. Finally, the Disciplinary Authority inflicted consolidated penalty of removal from the service which would not be a disqualification for future employment in terms of Clause 9(i)(b) (iv) of the Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010. The petitioner's appeal against the order imposing penalty of removal from the service was rejected by the Appellate Authority by an order communicated through letter no.999 dated 13.01.2012. The petitioner had approached this Court by filing writ application challenging the order passed by the Disciplinary Authority giving rise to C.W.J.C. No. 69159 of 2012. This Court, noticing the fact that the Appellate Authority had not considered either of the points raised by the petitioner in his memo of appeal, set aside the impugned communication dated 13.01.2012 by an order dated 18.10.2012 with a direction to the Appellate Authority to consider each and every point raised by the petitioner in his appeal afresh. The Appellate Authority was, further, directed to give the petitioner an opportunity of hearing.



This Court in its order dated 18.10.2012 had noticed that though the Disciplinary Authority had discussed each and every point but the question as to whether the said discussion was legal, valid and proper had to be considered by the Appellate Authority, in which the Appellate Authority failed. In compliance of this Court's order dated 18.10.2012, the petitioner was communicated, through letter no. 237 dated 06.07.2013 of the Bank, rejection of his appeal again. A copy of the said communication has been brought on record by way of Annexure-19 to this writ application. The developments subsequent to passing of the order by the Appellate Authority, after the petitioner filed the present writ application have already been taken note of in the beginning of the present judgment.

22. It has been stated in the writ application that an F.I.R. has been registered as Jamo Bazar P.S. Case No. 20 of 2002 on 06.04.2002 and it is the petitioner's further case that the charges against the petitioner have been levelled in the departmental proceeding on the basis of allegations made by the staff of the Branch who are accused in the criminal case. He has submitted that the Inspector General of Police, Muzaffarpur Range, Muzaffarpur, has noted during the course of



investigation that the fraud was detected by the petitioner, who himself was wrongly made an accused. There is statement in paragraph no.39 of the writ application that the then Branch Manager of the Branch, who had confessed his guilt in connection with grave and serious charge of fraud in the Bank, has been awarded the punishment of reprimand whereas, the petitioner has been terminated from the service of the Bank in spite of fact that there is no allegation against the petitioner of any financial irregularity causing loss to the Bank. Accordingly, it is the petitioner's case is that the imposition of punishment of removal from the service is discriminatory.

23. A counter affidavit has been filed on behalf of the Bank wherein the facts specifically asserted in the writ application have not been disputed except for the allegation made in the writ application that the petitioner was not given a personal hearing by the Appellate Authority in compliance of this Court's order dated 18.10.2012 passed in C.W.J.C. No. 6915 of 2012. The respondent Bank has justified the action taken against the petitioner. There is vague denial of the averments made in paragraph nos. 35 to 43 of the writ application, in the counter affidavit.

24. Mr. Bindhyachal Singh, learned Senior counsel



appearing on behalf of the petitioner has contended that the order of the Disciplinary Authority imposing the punishment of removal from the service is manifestly illegal having been passed in violation of principle of natural justice, inasmuch as, it does not disclose at all any application of mind rather it is mechanical acceptance of the report of the Inquiry Officer without even referring to the petitioner's response to the enquiry report explaining as to why the report should not be accepted. He has secondly submitted that the charges are vague as they lack materiel description. According to him, the charges cannot be said to be precise and definite which could have been pressed for imposition of extreme punishment of removal from the service. He has thereafter, taken me to the evidence adduced during the course of departmental enquiry to contend that the Inquiry Officer has based its findings merely on the communications made, subsequent to detection of fraudulent transactions in the Branch by such staffs who had complicity in such transactions. The communications which were exhibited on behalf of the Bank were in fact created in order to develop defence for those who were examined as witnesses during departmental enquiry. He has reiterated his submission that in any event, it has been consistently taken note of by the co-



ordinate Bench and the Division Bench of this Court that finding in respect of charge no.2 was without any evidence. He has lastly submitted that the evidence adduced during the course of departmental enquiry do not substantially establish other two charges namely charge nos. 1 and 3, even on the standards of preponderance of probabilities.

25. Mr. S.D. Sanjay, learned Senior counsel appearing on behalf of the Bank, on the other hand, has submitted that the materials available disclose that the Disciplinary Authority has followed a procedure in tune with the requirements of principle of natural justice. The petitioner was given adequate opportunity to defend the charge levelled against him. During the course of departmental proceeding, witnesses were examined in the presence of the petitioner and he was given opportunity to cross examine the witnesses. He had the opportunity to produce defence witnesses also. On appreciation of evidence adduced during the course of enquiry, the Inquiry Officer reached a conclusion that the charges no. 1, 2 and 3 against the petitioner stood proved and charge no. 4 could not be proved. The Disciplinary Authority, upon due analysis of the report of the Inquiry Officer, agreed with the findings recorded therein and decided to impose punishment against different



charges of proved misconduct, he contends. A consolidated penalty of removal from the service has been imposed considering the gravity of misconduct alleged against the petitioner. He has, accordingly, submitted that the decision making process cannot be faulted with in the present case. He has further argued that this Court may not re-appreciate the evidence, upon appreciation of which, the Inquiry Officer and the Disciplinary Authority have recorded their findings, in a proceeding of judicial review under Article 226 of the Constitution of India. He has contended that this Court in exercise of power of judicial review is required to examine as to whether there has been any fault in the decision making process. Neither re-appreciation of evidence nor correctness of the final decision needs to be examined, ordinarily, in a proceeding of judicial review, he adds. He has further submitted that after the matter was remanded by this Court earlier vide order dated 18.10.2012 passed in C.W.J.C. No. 6915 of 2012, the Appellate Authority has now passed a reasoned order and therefore, there is no requirement of any interference by this Court in the present proceeding.

26. I have duly considered the rival submissions advanced on behalf of the parties and carefully gone through the



documents available on record. I have kept in mind the observation made by the Supreme Court in its decision dated 03.10.2018 rendered in Civil Appeal No. 10180 of 2018 (Uttar Bihar Gram Bank and Ors. vs. Narendra Kumar Sinha) and another analogous case.

27. On careful scrutiny of the order of the Disciplinary Authority, I find substance in the submission made on behalf of the petitioner that there has been complete non-application of mind by the Disciplinary Authority. He has done the formality of recording in his order that he had gone through the documents, enquiry proceedings, written brief of Presenting Officer, written brief of C.S.O. (Charge-sheeted Officer) findings of the Inquiry Officer and submissions of C.S.O. (Charge-sheeted Officer) and in respect of all the three charges he has simply recorded *“The Inquiring Authority has found the charge as proved. I have also gone through the relevant records available with the Bank which were produced in the inquiry and concur with the findings of the Inquiring Authority”*. Except for this vague finding he has not discussed anything in his order in respect of charge nos. 1, 2 and 3. In respect of charge no.4 which was found not proved, the Disciplinary Authority has simply mentioned, *“I have also gone through the relevant*



records available with the Bank which was produced in the enquiry". There is no discussion at all as to why the explanation submitted by the petitioner in response to the report of the Inquiry Officer was not acceptable to the Disciplinary Authority.

28. In my opinion, the requirement of recording of reasons by the Disciplinary Authority as to why the employee's response to the report of the Inquiring Authority was not acceptable to him, is essential for compliance of principle of natural justice. In the case of ***G. Vallikumari vs Andhra Education Society & Ors.*** reported in ***2010(2) SCC 497***, the Supreme Court has held that requirement of recording reasons by every quasi judicial or even an Administrative Authority entrusted with the task of passing of an order adversely affecting an individual is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned. Situated thus, in my opinion, the impugned order passed by the Disciplinary Authority dated 16.04.2011 deserves to be set aside on this score alone. This view finds support from the Supreme Court's decision in case of ***G. Vallikumari vs Andhra Education Society & Ors*** reported in ***(2010) 2 SCC 497***. Paragraph 19 of which reads as under:-

"19. In his order, the Chairman of the Managing



Committee did refer to the allegations leveled against the appellant and representation submitted by her in the light of the findings recorded by the inquiry officer but without even advertent to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.”

The reasoned order of the Appellate Authority cannot be validated the patent illegality in the order of the Disciplinary Authority, as has been noticed above.

29. Coming now to the question of vagueness of the charges, it would be apt to refer to and deal with each and every charge for this purpose.

30. Charge no.1 reads that the petitioner misled the



Branch Manager and other officers/employees posted at Jamo market Branch by providing them a false information that he had been permitted by the Chairman to visit head office to constantly review the progress of matching of balance, whereas the petitioner had met the Chairman in this regard at his office only once or twice. This is how the petitioner managed to remain absent from the Branch and misled his higher officials. A written letter to this effect had allegedly been given by the officers and staffs of the Branch. However, there is no mention as to when and where the petitioner had misled the officers/employees of the Bank by providing false information. Charge No.1, in the Court's opinion, cannot be said to be definite and precise. The said charge was said to be based on a written letter signed under the signature of the officers/ employees posted at the Branch of the Bank. It is not mentioned in the said charge as to under whose signature the said letter was sent and when the letter was received by the Disciplinary Authority. It is mentioned in the charge that the petitioner remained absent from the Branch and misled the higher officials by supplying false information. It is not mentioned, however, as to when the petitioner had remained absent from the Branch by misleading higher officials or by supplying false information. It is well



settled law that the charges in a departmental enquiry entailing consequences like loss of job which means loss of livelihood, must be distinct and definite and there must be fair play in action.

31. In the case of ***Surath Chandra Chakrabarty vs State of West Bengal*** reported in ***1970 31(3) SCC 548***, the Supreme Court in no uncertain terms has held that the charge involving consequence of termination of service must be specific. Paragraph no.6 of the said decision reads as under:-

“6. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the-charges were extremely vague and indefinite. In spite of all this no one cared to



inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given a further opportunity at the stage of the second show cause notice to adduce any further evidence if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Art. 311 (2) of the Constitution as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges, must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations current findings against the respondent on that point. The resupplied to him. In this situation, for the above reason alone, the trial judge was fully justified in decreeing the suit.”
(Underlined for emphasis).

32. The decision rendered in the case of **Surath Chandra Chakrabarty** (supra) has been followed in the case of **Sawai Singh vs State of Rajasthan** reported in 1986 (3) SCC



454.

33. Similarly, charge no.2 alleges that in course of matching the balance of domestic savings Accounts the petitioner had been taking away/bringing back savings Accounts, ledger, deposit register, withdrawal register, supplementary register and vouchers and balance book relating to that from his residence at Siwan. The information to this effect had allegedly been submitted to the Disciplinary Authority by the officers/employees posted at the Branch, viz., Sri Harinath Ram, Sri Ram Sagar Sharma, Sri Kumar Sawalia Prasad Giri, Sri Fuldeo Singh and Sri Anil Kumar Ambastha through a letter signed by them. However, there is no mention as to on which dates the petitioner had taken the aforesaid registers/documents of the Bank to his residence. The said charge is based on a letter signed by the employees of the Bank but, the charge does not mention the date when the said letter was written by the employees nor the date when the same was received by the Disciplinary Authority.

34. Similar is the case with charge no.3 which alleges that the petitioner had assured the staffs / employees of the Bank that he would get them posted at the place of their choice but, to whom this misrepresentation was made by the



petitioner and when is not there in the charges.

35. For the aforesaid reasons, in my considered view, all the charges, in the absence of definite particulars mentioned therein, even briefly, suffer from the vice of vagueness.

36. I proceed now to the next issue of evidence adduced in the departmental enquiry in support of the charge. It is true that the Court exercising the power of judicial review under Article 226 of the Constitution of India should normally not re-appreciate the evidence already appreciated by the authorities exercising the quasi judicial function. However, if a challenge is posed to such finding on the ground that the same is without evidence or contrary to the evidence / materials on record or the same has been arrived at by taking into account irrelevant materials leaving out the relevant once, the Court, exercising the power of judicial review, is required to entertain such challenge on the basis of available materials / pleadings.

37. The Inquiry Officer has relied on ME-3, ME-4 and ME-5 (ME for Management Exhibit) exhibited by the Bank in support of charge no.1. ME-3 is the same letter which was addressed to the petitioner by the Chairman of the Bank dated 31.05.2002 (Annexure-6 to the writ application) whereby the



petitioner was asked to explain regarding instances of misconduct against him. Since the petitioner's explanation submitted in response to the said letter was not found satisfactory, a departmental proceeding was decided to be initiated against the petitioner. ME-3 therefore, cannot be treated as an evidence to establish the charge. ME-4 is a letter written by the officers/employees of the Bank addressed to the Chairman and ME-5, is a letter addressed to the Sub Divisional Police Officer, Mahrajganj by Anil Kumar Ambastha, who was posted in the Branch at the relevant point of time, in connection with criminal case registered in relation to fraudulent transaction in the Branch. On perusal of the copy of the proceedings of the departmental enquiry, it appears that one Kumar Sawalia Prasad Giri was produced as the management witness. He proved the said ME-4 and the fact that he was also a signatory to the said letter. In response to specific question put by the petitioner during the course of cross examination as to on which dates, the petitioner had gone to the headquarters after informing the Branch Manager, he responded that he did not remember the dates. The main allegation against the petitioner in charge no.1 is that he used to tell the Branch Manager that he was going to headquarters for the purpose of matching the balance sheet, as



desired by the Chairman and in that context he remained absent from the Branch. I have no hesitation, thus, in recording my conclusive opinion, on the basis of evidence adduced as available on record that no cogent evidence was adduced to establish that the petitioner habitually remained absent from the Branch on any false pretext. In my opinion, thus, the findings recorded by the Inquiry Officer in respect of charge no.1 is without any evidence and, therefore, perverse.

38. In respect of charge no. 2 which pertains to the petitioner's conduct of carrying certain ledgers/registers/ vouchers from the Bank to his residence, the department relied on ME-3, ME-4, ME-5, ME-7 and ME-8. As has been noticed hereibabove, ME-3 is a letter addressed to the petitioner by the Chairman of the Bank seeking his explanation in respect of the misconduct alleged. The said communication, in the nature of allegation, cannot be treated to be a piece of evidence in support of the charge. ME-4 and ME-5 are the communications made by the officers/ staffs of the Bank to the Chairman and the Sub Divisional Police Officers, Maharajganj. It was mentioned in the said communications, inter alia, that the petitioner used to carry certain registers of the Bank to his residence. ME-7 is a communication made by the Management of the Bank



addressed to the then Branch Manager of the Bank namely, Jai Prakash Singh, alleging that he had permitted the petitioner to carry the bank registers and other books of accounts and vouchers to his residence. In response to the said communication (ME-7), Jai Prakash Singh had informed the then Chairman that by acts name-dropping of the then Chairman, the petitioner used to carry ledgers and other books of accounts to his residence. Jai Prakash Singh was not examined during the departmental proceeding. No other person from the management of the Bank was examined to substantiate the allegation. Evidently, the Inquiry Officer has recorded a finding that charge no.2 against the petitioner is proved on the basis of the contents of the communications containing allegation that the petitioner used to carry ledgers/registers from the Bank to his residence. ME-4, ME-5 and ME-8 are apparently in the nature of defence of the authors of the three communications. There is no oral or documentary evidence showing absence of the ledgers/registers from the Bank or the petitioner carrying those documents from the Bank to his residence or bringing them back from his residence.

39. After having considered the evidence on record, I see no reason why I should not follow the opinion



recorded by the co-ordinate Bench of this Court in this case earlier in the order dated 26.09.2014, which was subsequently affirmed apropos charge no.2 by the Division Bench by an order dated 30.11.2017 passed in L.P.A. No.96 of 2015 and another analogous case.

40. Coming to the last charge i.e. charge no.3, it is alleged that the petitioner used to give wrong information to the officers/ employees of the Branch that the Chairman of the Bank had assured him that they would be given choice posting as and when desired by the petitioner. The gist of the allegation in charge no.3 is that the petitioner used to misrepresent before his colleagues that he was in a position to use his connection with the Chairman of the Bank for their transfers and postings. In support of charge no.3, again the management relied on ME-3, ME-4 and ME-6. ME-6 is the letter written by the employees / officers/ staffs of the Bank addressed to the Chairman making allegation that the petitioner used to make such representation. No evidence was, however, adduced in the departmental proceeding in this regard. In my opinion, the finding of the Inquiry Officer in respect of charge no.3 also cannot be sustained in the absence of any cogent evidence in support of the said charge. The finding recorded by the Inquiring



Officer in respect of charge no.3, in the Court's opinion, is based on no evidence in the absence of specific proof as to when and how the petitioner had made such misrepresentations. Vague allegation that the petitioner used to make such misrepresentation cannot be treated to be a piece of evidence.

41. For the reasons noted above, in my opinion, the decision of the Disciplinary Authority to impose punishment is unsustainable. The order of the Appellate Authority also, in the Court's opinion, deserves to be set aside for the same reasons discussed hereinabove. Accordingly, the order of the Disciplinary Authority dated 16.04.2011 and the order of the Appellate Authority communicated to the petitioner vide letter dated 06.07.2013 are set aside.

42. It is noteworthy at this juncture that Mr. S.D. Sanjay, learned senior counsel appearing for the Bank, has argued that in case this Court intends to interfere with the impugned order of the petitioner's removal from the service, the Court may not direct for his reinstatement and payment of back-wages and instead the Court may award compensation. He has relied on Supreme Court's decision rendered in the case of ***Jagbir Singh vs. Haryana State Agriculture Marketing Board and Another*** reported in (2009) 15 SCC 327 and ***Senior***



Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal and Others reported in ***(2010) 6 SCC 773***. In the case of ***Jagbir Singh*** (supra) the Supreme Court has held in paragraph no.7 as under:-

“7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

43. The Supreme Court has, however, further observed in case of ***Jagbir Singh*** (supra) that the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. The last sentence of paragraph no.14 is significant



which reads as under:-

“ xxx this Court has distinguished between a daily wager who does not hold a post and a permanent employee ”.

44. The case of **Santosh Kumar Seal** (supra) also arose out of a dispute under the Industrial Disputes Act, 1947 involving question of reinstatement of retrenched daily wagers. In the case of **Santosh Kumar Seal** (supra) the decision rendered in the case of **Jagbir Singh** (supra) has been relied on. The said two decisions, in the Courts opinion, has no application in the facts and circumstances of the present case.

45. In the present case, the petitioner was an officer of the Bank. Punishment of removal from the service was imposed upon him by the Disciplinary Authority on 16.04.2011. Ever since then, it is more than a decade now for which the petitioner is contesting the action of the Bank by filing departmental appeal and thereafter fighting litigation before this Court upto the Supreme Court. In my above-noted discussions, I have taken a definite view that the order of the Disciplinary Authority is wholly unsustainable, inasmuch as, the Disciplinary Authority has simply recorded his acceptance of the report of the Inquiry Officer without giving any consideration to the petitioner's response to the report of the



Inquiry Officer. I have consciously quoted hereinabove, the plea which the petitioner had taken before the Disciplinary Authority so as to convince him why the report of the Inquiry Officer should not be accepted. The nature of plea as taken by the petitioner in his response to the report of the Inquiry Officer cannot be said to be so unreasonable to be outrightly rejected. The order of the Appellate Authority was also found to be non-speaking by this Court on a challenge made by the petitioner and accordingly, the matter was remanded back to the Appellate Authority to pass order afresh. After the Appellate Authority rejected the petitioner's appeal, the petitioner filed present writ application. A co-ordinate Bench of this Court held that charge no.2 could not be said to be proved in the absence of evidence. It is to be noted that the punishment of removal from the service has been imposed on the ground of proved misconduct alleged in charge no.2. The said finding has been affirmed by a Division Bench of this Court. Interference by the Supreme Court with the decision of the Division Bench in the Letters Patent Appeal and order passed in this case dated 26.09.2014 is on the ground that each of the charges ought to have been considered separately. In such circumstance, disallowing the petitioner back-wages for the period during which he remained out of service because of



illegal orders passed by the Bank Authorities will be highly unjust and inequitable.

46. I have dealt with each charge framed against the petitioner in the departmental enquiry, separately, including charge no.2, without going into the *nitty gritties*, in the wake of rival submissions made on behalf of the petitioner and the Bank with reference to the Supreme Court's order whereby the matter has been remanded back to this Court. I have done, more so, in order to decide the matter conclusively in all respect because of its pendency since long.

47. In the facts and circumstance of the case, as noted above, consequent upon the quashing of the impugned orders, the petitioner shall required to be reinstated in service with full back-wages and/or consequential benefits as if no order of dismissal was ever passed against him. The payment of back-wages shall be however, subject to the petitioner furnishing statement on affidavit to the effect that during the period he remained out of service by operation of the impugned order of removal from service, he was not gainfully employed elsewhere. The Bank shall be at liberty to examine the claim of the petitioner that he was not gainfully employed for the purpose of payment of back-wages, if there appears any doubt over such



claim of the petitioner.

48. In result, this writ application is allowed.

49. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

P. Tiwari/-

AFR/NAFR	N.A.F.R.
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