IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.682 of 2019
In
Civil Writ Jurisdiction Case No.8254 of 2014

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1. The Chairman Uttar Bihar Gramin Bank, Muzaffarpur
2. The General Manager Uttar Bihar Gramin Bank, Muzaffarpur
3. The Regional Manager Uttar Bihar Gramin Bank, East Champaran (Motihari)

... ... Appellant/s

Versus

Raj Kishore Chaudhary S/o Sri Deo Narayan R/o Mohalla-Kolhuwarawa, Ward No. 2, Gali No. 3, P.O.-Motihari, P.S.-Motihari (Town), District-East Champaran (Motihari)

... ... Respondent/s

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with

Letters Patent Appeal No. 1299 of 2019
In
Civil Writ Jurisdiction Case No.8254 of 2014

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Raj Kishore Chaudhary Son of Sri Deo Narayan Chaudhary Resident of Mohalla- Kolhuwarawa, Ward no. 2, Gali No. 3, P.O- Motihari, Police Station- Motihari Town, District- East Champaran (Motihari)

... ... Appellant/s

Versus

1. The Chairman, Uttar Bihar Gramin Bank Muzaffarpur.
2. The General Manager Uttar Bihar Gramin Bank, Muzaffarpur.
3. The Regional Manager Uttar Bihar Gramin Bank, East Champaran (Motihari).

... ... Respondent/s

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Appearance :
(In Letters Patent Appeal No. 682 of 2019)
For the Appellant/s : Mr.Ajay Kumar Sinha, Sr. Advocate
For the Respondent/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Ram Binod Singh, Advocate
(In Letters Patent Appeal No. 1299 of 2019)
For the Appellant/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Ram Binod Singh, Advocate
For the Respondent Bank: Mr.Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 27-09-2022

Heard learned counsels for the parties.

2. These two appeals by the Chairman- cum-Disciplinary Authority, Uttar Bihar Gramin Bank, Muzaffarpur and Raj Kishore Chaudhary, for the purpose of factual aspects of the matter, we have taken the case of Raj Kishore Chaudhary.

3. Raj Kishore Chaudhary-appellant was subjected to disciplinary proceedings in framing article of 4 charges on 13.04.2011. He had submitted his reply to the charge-memo on 29.04.2011 and it was not satisfied by the disciplinary authority. Hence, disciplinary authority proceeded to hold inquiry. Inquiry report was submitted on 19.07.2013 in which the inquiring officer has held that Charge Nos. 1, 2 and 4 were proved and Charge No. 3 was not proved. The disciplinary authority after perusal of the inquiry records proceeded to impose the penalty of removal from service on 19.10.2013. Feeling aggrieved and dissatisfied with the removal order, appellant Raj Kishore Chaudhary preferred appeal before the appellate authority on 16.11.2013 and he has suffered order before the appellate authority. Raj Kishore Chaudhary preferred C.W.J.C. No. 8254 of 2014. The learned single Judge allowed the petition in part while remanding the matter to proceed further inquiry in respect

of Charge Nos. 1 and 4.

4. Feeling aggrieved by the order of the learned single Judge dated 04.01.2019 passed in C.W.J.C. No. 8254 of 2014, both Bank and Raj Kishore Chaudhary preferred present L.P.As.

5. Learned counsel for Raj Kishore Chaudhary-appellant vehemently contended that it is a case of no evidence. In such circumstances, the learned single Judge has committed error in remanding the matter to adjudicate disciplinary proceedings afresh in so far as Charge Nos. 1 and 4. In a case of no evidence question of remanding the matter to the inquiring authority is not warranted in terms of various judicial pronouncements. He has relied on following judgments:-

1. ***(2002) 10 SCC 471*** reported in ***Union of India Vs. K.D. Pandey,*** para 5 reads as under:-

> "**5.** Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the

inquires can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly."

2. ***(2009) 2 SCC 570*** reported in ***Roop Singh Negi Vs. Punjab National Bank & Others***, para 23 reads as under:-

"**23.** Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

3. ***(2015) 12 ACC 408*** reported in ***H. L. Gulati Vs. Union of India & Others***, para 6 reads as under:-

"**6.** Rule 9 afore-mentioned is being extracted hereunder:

"9.Right of President to withhold or withdraw pension. - (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re- employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(B) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re- employment, -

(i)shall not be instituted save with the sanction of the President,

(ii)shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b)judicial proceedings shall be deemed to be instituted -

(i)in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii)in the case of civil proceedings, on the date the plaint is presented in the court."

The aforesaid Rule came to be invoked on account of the fact that the appellant had attained the age of retirement, and had superannuated from service with effect from 30.06.2002. While invoking Rule 9 of the 1972 Rules, the punishing authority ordered the withholding of 50% of the appellant's pension permanently, and also, the withholding of 50% of the appellant's gratuity."

6. Further he has submitted that when it is a case of no evidence, in that event, question of re-appreciation of evidence by the inquiring authority in further inquiry is impermissible. In support of this contention he has relied on a decision rendered in the case of ***Union of India Vs. H.C. Goel*** reported in ***AIR 1964 SC 364,*** Para 20 and 21 reads as under:-

"**20.** This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and-, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311(2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings

> held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasijudicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this, position in law.
> **21.** He, however, attempted to argue that if the appellant acted bona fide, then the High Court would not be justified in interfering with its conclusion though the High Court may feel that the said conclusion is based on no evidence. His contention was that cases where conclusions are reached by the Government without any evidence, could not, in law, be distinguished from cases of mala fides; and so he suggested that perverse conclusions of fact may be and can be attacked only on the ground that, they are mala fides, and since mala fides were not alleged in the present case, it was not open to the respondent to contend that the view taken by the appellant can be corrected in writ proceedings."

Further he has cited a decision in the case of ***Bhagat Ram Vs. State of Himachal Pradesh & Others*** reported in ***(1983) 2 SCC 442.***

7. Further it is submitted that if the inquiry matter is remanded the principle of double jeopardy is attracted.

8. It is also submitted that even assuming that the alleged charge is proved, it is only a negligence and negligence does not amount to misconduct. In support of his contention, he has relied on a decision rendered in the case of ***Ravi Yashwant Bhoir Vs. District Collector, Raigad & Others*** reported in ***(2012) 4 SCC 407***, Para 15 reads as under:-

> "**15.** In M.M. Malhotra v. Union of India & Ors., this Court explained as under:
>
> "*17*.......It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve."
>
> A similar view has been reiterated in Baldev Singh Gandhi v. State of Punjab."

He has also cited a decision rendered in the case of ***Union of India & Others Vs. J. Ahmed*** reported in ***(1979) 2 SCC 286*** that negligence does not amount to misconduct.

9. Per contra, learned counsel for the Bank resisted the aforesaid contention and submitted that the learned single Judge has committed error in remanding the matter only to the limited charges and he should have remanded in respect of all the 4 charges for afresh inquiry from the defective stage. It is also submitted that case of Raj Kishore Chaudhary that it is a case of no evidence is incorrect for the reasons that in the charge-memo itself number of documents have been cited which

are relevant in support of charge. Only thing is documents have not been examined in the proper way. It is also submitted that contention of appreciation evidence, double jeopardy and negligence do not amount to misconduct, cannot be examined by the Writ Court in the light of Apex Court's decision in the case of ***Union of India & Others Vs. Dalbir Singh*** reported in ***(2021) 11 SCC 321.***

10. Heard learned counsel for the respective parties.

11. Appellant Raj Kishore Chaudhary was subjected to disciplinary proceedings in framing 4 charges and it was concluded in imposition of penalty of removal from service.

12. Learned single Judge has remanded the matter while allowing the petition. Para 12 to 19 of the order of the learned single Judge is as under:-

> "**12.** It is trite law that weakness of the defence cannot be made ground to hold a delinquent guilty as it is for the department to bring home the charges on basis of documentary as well as oral witness. This Court would find in respect of charge nos. 2 and 4 that there is no evidence available on the record to substantiate the findings of the charges being proved.
>
> **13.** Since charge nos. 2 and 4 are unsustainable and charge no. 3 has been found not proved the only charge which if at all remains is charge no. 1 regarding non-closure of the account of KCC loanee Godavari Devi. In respect of this allegation, it is submitted by Mr. Singh, learned counsel appearing for the petitioner that no allegation of personal gain has been attributed against the petitioner in the said charge and at best

it is a negligence or lapse which the chargesheeted officer has sought to substantiate by taking a plea that he was waiting for instruction from the Regional Office/ Head Office.

14. Such submission is seriously disputed by learned counsel appearing for the Bank. It is submitted by him that non-closure of the loan account of Godavari Devi in spite of the fact that the amount of Rs. 2668.50 has already been deposited by her has occasioned a loss to bank.

15. This Court would refrain from going into the said lapse, whether the same would constitute misconduct/charge or should be considered to be, at best negligence or failure in discharging duty. This aspect of the matter has to be examined by the respondent bank itself, in view of the nature of order being passed in the proceedings.

16. Since there is no evidence on record in respect of charge no. 2 & 4 as held herein above, conclusions in the enquiry report in respect of said charges is unsustainable in law. Order of punishment dated 19.10.2013, issued by the Disciplinary Authority inflicting punishment of "removal from service which shall not be a disqualification for future employment in terms of Regulation 39(1)(b)(iv) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010", is therefore quashed as the same is founded on the illegal enquiry report. As a result of quashing of the order of punishment subsequent order of the Appellate Authority is also unsustainable. The petitioner therefore would be entitled to reinstatement with all consequential benefits.

17. This Court however would leave to open to the authorities to proceed against the petitioner from the stage after submission of charge memo dated 13.4.2011 in accordance with law.

18. It would also be open to the respondents to take a decision whether they would consider allegations made in charge no. 4 to constitute any misconduct and take steps accordingly.

19. The writ petition is allowed in the terms indicate above."

13. The learned single Judge has committed error

in giving finding that it is a case of no evidence. On the other hand, charges which were proved in the inquiry reads as under:-

"**Charge No. 1**

Sri Choudhary in connivance with Md. Jamaluddin, Office Assistant, with malafide intention, got Rs. 2668.50 deposited from Godavari Devi on 26.04.2010 in KCC a/c no-245, despite the fact that the loan account (KCC-245) was already in credit balance with Rs. 10129.50 since long time. Sri Choudhary issued no dues certificate in favour of Gadavari Devi on 27.04.2010 that her KCC a/c no-245 is closed on 27.04.2010 whereas her loan account was not closed on 27.04.2010.

The MR produced MEX 10 (pay in slip dt. 27.04.2010 of KCC a/c 245 of Smt Godawari Devi). MEX-11 (copy of loan ledger folio of KCC a/c 245 of Godawari Devi), MEX-12 (copy of No Dues Certificate dated 27.04.2010 issued by CSO as BM to Smt. Godawari Devi), MEX-13 (copy of discussion note of auditors with Sri Choudhary CSO) MEX-17 (copy of audit report). The MR produced witness of MW-1 (One of the auditor audited and inspected the Raghunathpur Branch). MW-2 (present Br. Manager of Raghunathpur branch). The defence side produced no exhibit/witness to disprove this charge in the proceedings However the DR extensively made cross examination of MWs in the proceedings.

From perusal and observation of above MEX, and statements of MWs, it is documentarily found that Sri Choudhary, CSO, is connivance with the then Office Assistant Md. Jamaluddin, got Rs. 2668.50 deposited from Smt. Godawari Devi on 26.04.2010 in KCC a/c 245 of Smt. Devi, despite the fact this loan a/c 245 was not having any debit balance on this date, rather this KCC a/c 245 was exhibiting credit balance of Rs. 10129.50 and Sri Choudhary, as BM, issued no dues certificate on this dated i.e. 27.04.2010.

Hence I find this charge No. 01 as proved.

Charge No. 2

Sri Raj Kumar Jha s/o Upendra Jha complained that he did not get KCC loan from the Branch whereas KCC a/c no-815 stands in his name in the Branch record. Thus KCC loan a/c no 815 in the name of Raj Kumar Jha has fraudulently been disbursed by Sri Choudhary. Sri Choudhary thereby embezzled the loan amount.

The MR produced MEX 14 (application of Sri Raj Kumar Jha, denying having taken loan of KCC a/c 815), MEX-15 (copy of loan ledger folio of KCC a/c 815), MEX-16 (copy of loan document of KCC a/c 815), MEX-17 (Copy of Audit report), MEX-19 (Copy of KCC withdrawals in different dates).

The MR also produced witness of MW-1 (one of the auditor who audited & investigated the Raghunathpur Branch), MW-2 (present Branch Manager Raghunathpur Branch), and MW-3 (Raj Kumar Jha, the complainant)

The DR did not produce any exhibit/witness to disprove this charge. DR has simply narrated that Sri Jha did not file any FIR, complaint to any other agency, if loan was fake in his name. Sri Jha even did not lodge complaint to Vigilance Deptt., investigating the Raghunathpur KCC episode.

On perusal and observation of above MEXs and witness argument of DR, it is found that Sri Jha, when he acknowledge that there is a KCC loan in his name, he lodged written complaint to the auditors and appeared as a witness in the proceedings, and re-iterated his stand that he has not taken the loan and no where he has signed on the papers of loan. Signature made by Sri Jha on the complaint (MEX 14) and signature marked on loan documents (MEX 16), Signature marked on different KCC withdrawals (MEX 19) are not tallying.

Hence it is observed that KCC 815 in the name of Sri Raj Kumar Jha, has fraudulently been disbursed by Sri Choudhary, CSO.

As such I find charge No. 02 as proved.

Charge No. 03

Sri Upendra Jha complained that KCC loan (KCC a/c no-814) was shown as disbursed in his name whereas he did not sign loan documents nor signed any debit and credit vouchers of the Bank. For Example: Dr Voucher Dt 25.11.2009, 5.12.2009, 24.12.2009, 6.1.2010

& 20.1.2010 Cr. Voucher Dt 06.01.2010. Thus KCC loan a/c no. 814 in the name of Upendra Jha has fraudulently been disbursed by Sri Choudhary. Sri Choudhary thereby embezzled the loan amount. The MR produced MEX 18 (Copy of loan document) MEX 17 (Copy of Audit Report) The MR did not produce Sri Upendra Jha as witness, nor any complaint of Sri Jha regarding claim of having not received the loan.

Hence MR has failed to substantiate the charge.

As such I hold charge No. 03 as not proved.

Charge No. 04

Sri Choudhary indulged himself in corrupt practices. He accepted illegal gratification in sanctioning & disbursement of KCC loan from the following beneficiaries/intending beneficiaries. In some of the undernoted cases Sri Choudhary connived with Md. Jamaluddin, Office Assistant, in taking bribe.

For Example: 1. Raja Ray S/O Raghunath Ray (KCC 671), 2. Ramakant Singh S/O Saryug Singh (KCC-587), 3. Santosh Kumar Kushwaha S/O Ganesh Bhagat (KCC-596), 4. Arun Kumar Singh S/O Ramakant Singh, Vill-Madhopur, 5. Sibpujan Sah S/O Mukhi Sah (KCC-699), 6. Raj Kishor Giri (KCC-682), 7. Ram Ekbal Singh (KCC-606), 8. Chand Kishor Giri (KCC-370), 9. Prem Chand Singh (KCC-491), 10. Bhikhari Singh (KCC-686), 11. Kripa Narayan Giri S/O Late Vishwanth Giri (KCC-698), 12. Udai Bahadur Singh S/O Amar Singh (KCC-648), 13. Dwarika Giri S/O Jadolal Giri (KCC-643), 14. Saiyad Samim Ahmad (KCC-648), 15. Taslim Mian (KCC-724), 16. Kalam Khan (KCC-718), 17. Habib Mian (KCC-720), 18. Kifaytulla Mian KCC-738), 19. Kalimullah Mian (KCC-736), & 20. Shoukat Ali Khan (KCC-838).

The MR to prove this charge, produced following exhibits in the proceedings:-

MEX-1 (KCC a/c 698 Kripa Narayan Giri's complaint) MEX-2 (Complaint of KCC a/c 648 Syed Samir Akhtar, KCC 724 Tashian Mia, KCC 718 Kalam Khan, KCC 720 Habib Mia, KCC 738 Kiffaytullah Mia, KCC 736 Kalimullah Mia – regarding having got lions share deducted as illegal gratification in lieu of granting KCC Loans).

MEX-3 (Complaint of Shiv Pujan Sah KCC 699)

MEX-4 (Complaints of Raj Kishore Giri KCC 682, Ram Ekbal Singh KCC 606, KCC 370, Premchand Singh KCC 491, Bhikhari Singh KCC 686).

MEX-5 (Complaint of Dwarika Giri KCC 643)

MEX-6 (Complaint of Sohbat Ali Khan KCC 838)

MEX-7 (Complaint of Raja Ram KCC 671)

MEX-8 (Complaint of Rama Kant Singh KCC 587)

MEX-9 (Complaint of Udai Bahadur Singh KCC 816)

MEX-17 (Copy of Audit Report)

To authentic this charge, the MR also produced witness of MW-1 (auditor who received the complaints during the field visit in course of investigation).

The Defence produced DEX 1, 2, 3, 4, 5 (Copy of affidavit from Sri Raj Kishor Giri, Sri Ram Ekbal Singh, Bhikhari Singh, Shiv Pujan Sah, Dwarika Giri (all in one handwriting and on dated 27.12.2011 except affidavit of Dwarika Giri). The defence also produced witness of Dwarika Giri, One of the complaints countering the allegation leveled by him.

On perusal of above exhibits and witnesses it is found that 20 names of complaints were referred in the charge sheet alleging large scale corruption in granting loans, deduction of lions share while disbursing KCC loans in connivance with Md. Jamaluddin, the then office Assistant.

The defence side could being only one complainant for witness in the proceedings who could not face cross examination of MR, as why he signed the complaint, what were contents of complaints. As such the complaint was confirmed to have been made by him which have also been corroborated by MWs in their deposition, and as such countering his own complaint at a later stage and even at the stage of enquiry clearly shows that he was made to depose in favour of the defence and further he became in non stable when question in cross examination was put to before him. Therefore his statement countering his own statement made earlier questions the very bonafide of it.

> The auditor has also concluded large scale corruption made by Sri Choudhary, CSO while disbursing KCC loans. The affidavit are after though creation and not convincing. MR has established the wrong deeds of Sri Choudhary CSO in form of deduction of illegal amount while disbursing loans over the counter.
>
> As such, I find this charge as proved."

Among the aforesaid charges, charge nos. 1, 2 and 4 were proved. Charge No. 3 was not proved.

14. Perusal of the aforesaid material in support of charge, it is evident that it is a case of material evidence and it is not a case of no evidence. Only thing is material evidence which were available on record and have not been taken into consideration with corroborative evidence.

15. Therefore, contention of the learned counsel for the Raj Kishore Chaudhary that it is a case of no evidence and so also finding given by the learned single Judge is contrary to aforesaid material in support of Charge Nos. 1, 2 and 4.

16. Perusal of the records, it is evident that Charge Nos. 1, 2 and 4 have not been proved in the inquiry in the known manner. In other words, concerned witness has not been cited and examined and cross-examined. Therefore, the contention of the learned counsel for the appellant-Raj Kishore Chaudhary that it is a case of no evidence and so also by the learned single Judge is not appreciable, having regard to the

material information which were supported by charges which were on record. In the result, the contention of the learned counsel for the appellant- Raj Kishore Chaudhary that it is a case of no evidence and it is not a matter of remand cannot be appreciated. Accordingly, the aforesaid contentions stands rejected.

17. Learned counsel for the appellant- Raj Kishore Chaudhary taken a contention that evidence is required to be appreciated under Article 226 of the Constitution. Question of appreciation or re-appreciation of evidence is not warranted as held by the Apex Court in the case of ***B.C. Chaturvedi Vs. Union of India & Others*** reported in ***(1995) 6 SCC 749.***

18. Therefore, whatever contention urged that it is a case of appreciation of evidence cannot be gone into by this court while sitting under Article 226 of the Constitution. This court cannot act as an appellate authority.

Apex Court in case of ***Kuldeep Singh V. Commissioner of Police*** reported in ***(1999) 2 SCC 10*** held that High Court need not to go into the evidence unless evidence is perverse.

19. Learned counsel for the appellant-Raj Kishore

Chaudhary submitted that it is a case of Double Jeopardy. The Double Jeopardy principle is not at all attracted in the case in hand for the reasons that Raj Kishore Chaudhary has not been punished on two occasions on the same charges.

20. It is also submitted on behalf of Raj Kishore Chaudhary that alleged charge is relating to only negligence and negligence cannot be treated as misconduct. In support of the aforesaid contention, he has relied on two decisions cited (supra) ***Bhoir Vs. District Collector, Raigad & Others*** reported in ***(2012) 4 SCC 407*** and ***Union of India & Others Vs. J. Ahmed*** reported in ***(1979) 2 SCC 286***.

21. The aforesaid contention cannot be gone into for the reasons that whether alleged charge is negligent or not is required to be decided by the inquiring /disciplinary authority or an appellate authority. Under Article 226 of the Constitution, the Court cannot examine whether the alleged charge is negligible or it amounts to misconduct. Moreover, the appellant- Raj Kishore Chaudhary was an officer under Scale-1 in the Bank. Customers of the Bank had trust and faith in the Bank in respect of money transaction. Officer or any staff of the Bank is required to take all possible steps to protect the interest of the Bank and to discharge his/her duties with utmost integrity,

honesty devotion and diligence and becoming of a Bank Staff. Good conduct and discipline are inseparable from functioning of every staff of the Bank irrespective of officer or any sub-staff. In such an event, Raj Kishore Chaudhary cannot plead that the alleged charge is only a negligence and it does not amount to misconduct. Having regard to Charge No. 4, it is a very serious allegation levelled against Raj Kishore Chaudhary relating to alleged corrupt practices in sanctioning and disbursement of KCC Loan from more than 20 persons who have given complaints. The aforesaid charge cannot be held to be negligent.

22. In the light of these facts and circumstances, order of the learned single Judge is modified to the extent that Charge Nos. 1, 2 and 4 were required to be remanded and it is not a case of no evidence. Matter is required to be inquired from the defective stage. The disciplinary/inquiring authority are hereby directed to strictly adhere to the Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 and complete inquiry within a period of four months from the date of receipt of this order.

23. Appellant Raj Kishore Chaudhary is hereby directed to cooperate in the disciplinary proceedings.

24. Disciplinary authority is hereby directed to

take note of the fact that Raj Kishore Chaudhary has attained age of superannuation and retired from service. Therefore, the disciplinary authority cannot impose any of the penalties mentioned in the Regulation. If any Regulation provides for withholding of any retiral benefits, in that event relevant provision shall be invoked after giving ample opportunity of hearing to Raj Kishore Chaudhary.

25. With the above observations the aforesaid LPA stands disposed of.

26. At this stage, learned counsel for the Bank submitted that learned single Judge has directed the Bank to reinstate Raj Kishore Chaudhary. Therefore, whatever direction relating to reinstatement is concerned, it has become infructuous for the reasons that during pendency of the present appeal appellant- Raj Kishore Choudhary has attained age of superannuation and retired from service on 31.10.2019.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

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