IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.35 of 2020

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Bhawesh Kumar Jha Son of Pramod Jha, R/o Village and Post- Hissar, Via Khirhar P.S. and District- Madhubani.

... ... Petitioner/s

Versus

1. The Punjab National Bank through Zonal Manager-cum- Appellate Authority, Zonal Office, R. Block, Patna.
2. Circle Head, HRD Department, Circle Officer, GM Road, Darbhanga.
3. Chief Manager, Punjab National Bank, HRD Department, Circle Officer, GM Road, Darbhanga.
4. Birendra Kumar Pappu, Inquiry Officer,n Senior Manager, Punjab National Bank, Branch Office-Babubarhi, Madhubani.
5. Anuj Kumar, Presenting Officer, Manager BO, LNMU.
6. Sanjay Singh (MW I) Senior Branch Manager, Jayanagar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Adv
		Mr. Sanjeev Verma, Adv
For the Respondent/s	:	Mr. Mritunjay Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 27-06-2022

The petitioner has sought quashing of order dated 18.06.2019 passed by the Appellate Authority, whereby an appeal filed by the petitioner against dismissal from service of the bank has been rejected. Petitioner has also sought reinstatement with payment of all arrears.

This court would observe that the petitioner has not assailed the dismissal order dated 29.05.2018. For that reason alone, this Court was of the *prima facie* opinion that the relief for reinstatement claimed by the petitioner is not maintainable.

The learned senior counsel, however, submits that even if the appellate authority's order is set aside, petitioner's claim can be reconsidered by the appellate authority.

In view thereof, this court would consider that the petitioner was proceeded against vide charge memo dated 28.06.2017 issued by the Circle Head-cum-Disciplinary Authority. The charges in substance were as follows:

> *"1. (A) You have opened a fictitious account no: 0237000100610044 in the name of deceased pensioner Smt. Durga Devi on 29/06/2016 and transferred an amount of Rs. 160000.00 (Rs. One Lac sixty thousand) on 29/06/2016 from old pension account no: 0237000300501078 of Smt. Durga Devi to new opened fake account no 0237000100610044. You used own user ID & PW (320713bkj) at the time of opening of fake account no: 0237000100610044 on 29/06/2016 & further unauthorized transfer of amount of Rs. 160000.00 in this account on same day i.e. 29/06/2016. The details of accounts are as under :-*

Sl. No	Date	Name of Pensioner	Date of Death	Old Pension account no & Date of open of old account	New fake pension account no & date of open of new account	Date of Transaction.
01	29/06/016	Durga Devi	18/07/2014	0237000300501078 opened on 09.02.1993	0237000100610044 opened on 29.06.2016	29.06.2016

> *(B) You have entered fraudulently in the system for issuing ATM card on 29/06/2016 in the fake account no: 0237000100610044 of deceased person opened in the name of Smt. Durga Devi by using own User ID & PW (320713bkj) and deliberately not mentioned the details of ATM card in ATM issue register for record purpose*

as per bank's extant guidelines. This ATM card was further used for unauthorized withdrawal of amount of Rs. 160000.00 from fake account No: 0237000100610044 of Durga Devi on different dates from PNB ATM Jaynagar (02 ATM Locations/ KIOSK at Jaynagar) & SBI ATM Jaynagar. The details of different accounts are as under:

Date	A/C No	Mode of Transaction	Amount	Remarks
29/09/2016	02370001006 10044 (fake account)	Credit through transfer from old account to new fake account.	160000.00	User ID & PW (320713bkj
04/07/2016	--DO--	ATM Withdrawal	10000.00	SBI ATM Jaynagar
04/07/2016	--DO--	--DO--	10000.00	--DO--
04/07/2016	--DO--	--DO--	5000.00	--DO--
11/07/2016	--DO--	--DO--	10000.00	--DO--
12/07/2016	--DO--	--DO--	10000.00	PNB ATM Jaynagar/KISOK
12/07/2016	--DO--	--DO--	10000.00	--DO--
14/07/2016	--DO--	--DO--	10000.00	--DO--
14/07/2016	--DO--	--DO--	10000.00	--DO--
02/08/2016	--DO--	--DO--	10000.00	--DO--
02/08/2016	--DO--	--DO--	10000.00	--DO--
10/08/2016	--DO--	--DO--	10000.00	--DO--
10/08/2016	--DO--	--DO--	10000.00	--DO--
10/08/2016	--DO--	--DO--	5000.00	--DO--
13/08/2016	--DO--	--DO--	10000.00	--DO--
13/08/2016	--DO--	--DO--	10000.00	--DO--
13/08/2016	--DO--	--DO--	5000.00	--DO--
15/08/2016	--DO--	--DO--	10000.00	--DO--
15/08/2016	--DO--	--DO--	10000.00	--DO--

(C) You mentioned/ updated mobile no: 9534568586 in fake account no: 0237000100610044 opened in the name of Smt. Durga Devi. This mobile no. was already given in account No. 3359000300000357 of your grandfather Sh. Gulab Jha (Pension account opened on 31/05/1977 at BO: Umgaon/ D. No: 3359). The mobile no: 9534568586 was enabled in account no: 3359000300000357 of Sh. Gulab Jha on

11/12/2012 & further disabled from the account on 06/05/2015 by modification at BO: Jaynagar.

2. (A) You transferred / credited the closure proceeds of amount of Rs. 781643.00 (Rs. Seven Lac eighty one thousand six hundred forty three) related with 04 FDRs of different customers (0237003102031015 (Sukhwant Kaur), 0237003101980015 (Sukhwant kaur), 0237003102344016 (Paramjit Kaur) & 023700PR00003560 (Sukhwant Kaur & Sampuron Singh) into your own account no: 3359000100106103 (Bhavesh Kumar Jha, opened on 21/04/2011 at BO: Umgaon) on 17/05/2016 by making alterations on FDR receipts against the mandate given by the customers for crediting the FDR proceeds in their accounts. After holding this amount in unauthorized manner in your personal account no: 3359000100106103 for 01 day you further transferred an amount of Rs. 551624.00 (Rs. Five Lac fifty one thousand six hundred twenty four) in the saving account no: 0237000100093542 of Navneet singh & Sukhwant Kaur & rest amount of Rs. 209357.00 (Rs. Two lac nine thousand three hundred fifty seven) kept in hold in own personal account no: 3359000100106103 for personal gain. The details of accounts are as under :

Sl. No	Date	Name	FDR Account No	FDR amount	Credited_Account	Enter/Posted
01	17/05/2016	Sukhwant Kaur	0237003102031015	229758.00	3359000100106103/Bhawesh Kr Jha	320713bkj
02	17/05/2016	--DO--	0237003101980015	198731.00	--DO--	320713bkj
03	17/05/2016	Paramjit Kaur	0237003102344016	212615.00	--DO--	320713bkj
04	17/05/2016	Sukhwant Kaur & Sampuron Singh	023700PR00003560	140539.00	--DO--	320713bkj

			Total	781643.00		

(B) Out of total proceed of 04 FDR's of amount Rs. 781643.00 you kept the amount of Rs. 209357.00 (Rs. Two lac nine thousana three hundred fifty seven) in own account no: 3359000100106103 unauthorizely which was further used for personal gain by transferring the amount (Rs. 30000.00 on 02 dates in own OD account no: 0237009400012909) for the purpose of reducing your liability in the OD account, three cash withdrawal (Rs. 80000.00 in cash on 20/05/2016 from BO: Umgaon, Rs. 3500.00 on 07/09/2016, Rs. 2000.00 on 12/10/2016 & Rs. 3000.00 on 19/10/2016. Ali 03 cash withdrawals from BO: Marwari College (D. No: 4650) and rest amount of Rs. 170857.00 (Rs. One lac seventy thousand eight hundred fifty seven) withdrawal in unauthorized manner through ATMs of PNB, SBI & POS terminals at various locations on different dates. The details of accounts are as under:

Sl. No	Date	Account no/Name	Amount	Trf_Detail	Remarks
01	17/05/2016	From no: 3359000100106103/Bhavesh Kr Jha	20000.00	To OD account No: 0237009400012909 (Bhavesh Kr Jha)	User ID/PW (320713bkj)
02	19/05/2016	--DO--	10000.00	--DO--	--DO--
03	20/05/2016	--DO--	80000.00	Cash Payment	BO: Umgaon
04	07/09/2016	--DO--	3500.00	--DO--	BO: MC, Darbhanga
05	22/09/2016	--DO--	2000.00	--DO--	--DO--
06	18/10/2016	--DO--	3000.00	--DO--	--DO--

3. You did not ensure proper stitching, sealing of receipts & payment vouchers on different dates due to which payment vouchers related with fraudulent transactions are missing.

Sl. No.	Date	Account no/Name	Amount (In Rs.)
01	16/11/2015	0237000100505362(Binda Devi)	20000.00
02	29/10/2015	--DO--	20000.00

Before the Inquiry Officer, the petitioner filed his defense statement/written statement which has not been placed on record, either by the petitioner or the respondent-Bank.

The only reference to the petitioner's defence available in the record is the petitioner's communication to the Chief Manager (Annexure 10) wherein the following stands with respect to the charges have been stated by the petitioner:

"With regards to above I beg to submit as under:-

That I deny the charges as leveled against me vide chargesheet date 28.06.2017 received by me on 04.07.2017.

That I being subordinate staff of the branch not well armoured with the intricacies of password, hence somebody misutilized my ID and password therewith.

That I have followed this direction of the branch managers and or, officers of the branch.

That the mobile number mentioned in charges sheet does not anyway belongs to me.

That proceeds of FDR deposited in my account was part of loan taken by the customers that was well within the knowledge of Branch incumbent.

Due to charge of Branch premises & earthquake affect voucher were not stitched regularly.

Sir, I have always served the bank with utmost sincerity, honesty & diligences since joining the bank in the year 2013, and assure my best service in the future."

Petitioner has taken the same stand in the appeal filed before the Appellate Authority.

The learned senior counsel has strenuously urged that the encashment of the fixed deposit proceeds in his account and opening of account in the name of a dead person are alleged irregularities/misconduct which the petitioner could not have committed unless he was in someway being assisted by someone else or such lapse was being deliberately overlooked by some higher authority in the branch. However, no action has been taken against anyone else. This strikes at the root of fairness in the matter of conduct of proceedings against the petitioner and smacks of malafide.

On bare perusal of the petitioner's response to the charges, taken note of above, this court would observe that when such huge amount was credited in his account he has not objected or even intimated the authorities regarding credit of such huge amounts in his account. Petitioner has also not denied the fact that using these amounts, he has discharged his personal liability arising out of the overdraft account. The plea that such undue credit in his account was not possible unless facilitated or overlooked by some authority in the branch would not absolve the petitioner of his misconduct.

Having regard to the defence of the petitioner, taken note of above, this Court would observe that substantially there is no denial of the allegations and the plea that lapse could not have been committed by the petitioner alone, and that none other than petitioner has been proceeded against, in the opinion of the Court, does not in anyway mitigate the charges against the petitioner.

Having recorded so this Court would observe that the high level of integrity and high standard of conduct required of a bank employee is by now well established through various decisions of the Apex Court. In view of the above noted reasons, this court would observe that even if charge no. 2(B) is taken to be true, the same would suffice to sustain the order of dismissal against the petitioner.

In this case the same stand has been taken by the petitioner with respect to other charges also that the same could not have been committed unless facilitated or overlooked by some authority of the bank and that such authority was also required to be proceeded against.

The stand of the petitioner in the proceedings, therefore, amounts to substantial admission of the lapse. petitioner cannot be absolved of the penal consequences for the reason that none other has been proceeded against.

No procedural irregularity has been alleged.

The scope of judicial review under Article 226 of the Constitution of India as laid down by the Apex Court in the case of ***Union Of India & Ors v. P. Gunasekaran*** reported in **2015 (2) SCC 610** confines the jurisdiction of this Court in the instant case in view of the petitioner's substantial admission taken note of hereinabove and the fact that no procedural irregularity whatsoever has been alleged. The allegation of malafide also is without any specific details. Such plea of malafide without even specifying the reasons in support of such malafide; and the persons against whom malafide is alleged, is also untenable in the eyes of law. The well settled position regarding scope of judicial review of disciplinary proceedings under Articles 226 and 227 of the Constitution of India laid down in the case of **P. Gunasekaran** (supra) is being reproduced for quick reference. Paragraphs 12 and 13 read as follows:

> *"**12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

***13.** Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;3. You did not

ensure proper stitching, sealing of receipts & payment vouchers on different dates due to which payment vouchers related with fraudulent transactions are missing.

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

In view of the above noted discussions and consideration, no case is made out for interference with the punishment awarded to the petitioner.

Writ application is dismissed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.06.2022
Transmission Date	NA