IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 1283 of 2023

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Nagendra Kumar, Son of Ram Balak Singh, Resident of 510 Nehru Nagar, Patliputra, Phulwari, District- Patna- 800013, Bihar.

... ... Petitioner/s

Versus

1. The Chairman -cum- Appellate Authority, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur, Bihar-842001.
2. The General Manager -cum- Disciplinary Authority, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur, Bihar-842001.
3. The Regional Manager, Uttar Bihar Gramin Bank, Regional Office at Prisad Bazar, Madhubani (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi, Advocate
		Mr. Binod Kumar, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, Advocate
		Mr. Amitesh Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

CAV JUDGMENT

Date : 16-05-2024

1. The Petitioner was the Branch Manager of Chatra Gobraura, Gramin Bank under the Administrative Control of the Regional Office of Uttar Bihar Gramin Bank situated at Madhubani.

2. The Petitioner has filed the instant writ petition under Article 226 of the Constitution for the following reliefs:-

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"i. For setting aside the order dated 22-07-2022 contained in letter No. HO/DAB/15/22-23/No.50 whereby the Petitioner has been awarded with major punishment of 'compulsory retirement' as well as he shall be not paid any more salary/pay and allowances for the period he remained under suspension than what was already paid to him as subsistence allowance.

ii. For further quashing of order dated 29-10-2022 contained in Letter No. HO/DAD/15/22-23/No. 110 passed and issued by the Chairman, -cum- Appellate Authority, Uttar Bihar Gramin Bank by which in place of interfering with the order of the Disciplinary Authority, he only upheld the aforesaid punishment order.

iii. For further direction to Respondent authorities that after setting aside the aforesaid orders the Petitioner be restored to his earlier status/post with all admissible and consequential benefits including seniority etc arising thereafter.

iv. For the Petitioner prays for further relief(s) for which Petitioner is being found entitled to in the facts and circumstances of the present case."

3. That on 15th of February, 2021 a surprise inspection was held in the branch under the Administrative Control of the

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Petitioner, and, the Inspecting Authority found certain Banking irregularity, viz, deficit in the cash balance amounting to Rs. 13,000/- and consequent mismatch in respect of the closing balance of the cash in hand with the Bank by way of physical inspection of the cash as well as the ledger of the Bank. The Petitioner was directed to show cause as to why there was such discrepancy in the cash balance. The Petitioner submitted his reply on 18th of February, 2021 to the Regional Manager, Madhubani in which he clarified that it was a *bona fide* mistake and human error cropped up during disbursement of money to the account holders. It is also reported that on the very next day, he deposited the deficit amount of Rs. 13,000/- by cash withdrawing the said sum from his personal account. The reply of the Branch Manager was held to be not satisfactory and a memorandum of charge was served upon him on 3rd of June, 2021, contemplating discrepancy proceeding for the alleged misconduct committed by him under Regulations 18 and 20 of Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 read with Uttar Bihar Gramin Bank Service (Amending) Regulation, 2013 (hereinafter referred to as the 'said Regulations').

4. It is alleged by the Petitioner that the disciplinary

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authority without considering the reply to the show cause initiated departmental inquiry against him. The Inquiry Officer submitted his report on completion of inquiry and by an order dated 2nd of March, 2022, the disciplinary authority directed the Petitioner to submit his reply/defence against the inquiry report. The Petitioner duly submitted his reply on 30th of March, 2022 categorically mentioning the fact that the deficit of Rs. 13,000/- on 15th of February, 2021 was caused to the *bona fide* mistake while performing Bank transactions. There is no evidence that the Petitioner misappropriated the said amount and on the following day he repaid the said amount of Rs. 13,000/-. He also stated that as soon as he detected the shortage of the said amount on 15th of February, 2021, he tired to inform the said mismatch to the higher authorities of the Bank but they could not be connected over telephone because of the fact that the Petitioner's office was situated in a remote area of the State. Finally, *vide* an order dated 22nd of July, 2022, the Petitioner was awarded with major punishment of compulsory retirement in terms of Regulation 39(1)(b)(iii) of said Regulations. Against the order of compulsory retirement, the Petitioner preferred an appeal before the Appellate Authority but the Appellate Authority upheld the order of punishment *vide* an order dated

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29th of October, 2022. The Petitioner also states that on the complaint made by his superior authority, a criminal case being Khajauli (Madhubani) P.S. Case No. 52 of 2021 dated 20th of March, 2021 under Sections 420 and 409 of the IPC was registered against the Petitioner.

5. On the above fact, the Petitioner has filed the instant writ petition.

6. It is submitted by the learned Advocate on behalf of the Petitioner that in the Memorandum of Charge, the Petitioner was charged for only one alleged misconduct. It is stated in the Memorandum of Charge (Annexure-1) that on 16th of February, 2021, Shri Akhil Anand, Branch Manger, Satghara Branch visited Chatra Gobraura Branch for surprise inspection and verified opening cash balance dated 16th of February, 2021 kept in cash safe. While checking cash in cash safe, it was found that Rs. 13,000/- only was short, in respect of closing cash balance in the system dated 15th of February, 2021. Daily cash balance register dated 15th of February, 2021 was manipulated at the time of closing cash balance and indicated falsely by the Petitioner with *mala fide* intention to show the current balance, i.e., Rs. 3,88,805/- whereas the actual cash balance in cash safe was Rs. 3,75,805 only i.e., shortage of cash amount to Rs.

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13,000/-.

7. The Petitioner with a view to conceal the fact of defalcation of cash, wrongly mentioned the cash denomination of having 743 notes of Rs. 500/- but actually 717 numbers of currency notes of Rs. 500/- were found in the cash safe. Thus, there was shortfall of 26 numbers of currency notes of Rs. 500/- denomination.

8. Learned Advocate on behalf of the Petitioner next takes me to Annexure-3 being the reply of the employee where he stated that it was a *bona fide* mistake and human error in Banking transaction. He admitted the said mistake and error and immediately on 16th of February, 2021, he deposited Rs. 13,000/- withdrawing the said amount from his personal account and submits that the mismatch in respect of the closing account of the Bank had been rectified. It is also submitted that in the reply to the show cause, the Petitioner informed that he tried to make a contact with his higher authorities when a mismatch was found in the closing account but could not establish contact with them. The said fact is revealed in the inquiry report of the inquiry officer where he observed as follows:-

> *"PO also establishes the fact that on 15.02.201 Sri Nagendra Kumar has deposited Rs 13000/- in his accounts having account no*

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1000341030010284 and transfer amount of Rs 13000/- in his SBI account having account no 10636334415 and IFSC code SBIN0001513 provided enclosed as MEX3 and MEX4, although CSO said that it is mere coincidence that the amount of transactions in Nagendra Kumar self- account done by him and the amount of transactions day is same but not provide any facts which unrelated the facts rather he says that Sri Nagendra Kumar tried to contact RO officials on 15.02.2021 after knowing that cash became short in transactions to know the way that how could this problem will be solve but he was not able to contact the officials as no ne pick the phone and submitted the call details of Sri Nagendra Kumar of dated 15.02.2021 denoted as MEX4."

9. It is also submitted by the learned Advocate for the Petitioner that the impugned order passed by the disciplinary authority and also by the Appellate Authority were practically replication of the report of the inquiry officer and the appellate authorities did not independently verify the case of the Petitioner to come to a conclusion as to whether the purported act was consciously done by the Petitioner with the intention of embezzlement of fund or it was a *bona fide* mistake.

10. He also refers to Rule 18 and Rule 20 of the said Regulations. Rules 18 and 20 runs thus:-

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"18. Liability to abide by the regulations and orders. - Every officer or employee shall conform to and abide by these regulations and shall also observe, comply with and obey all orders and directions which may, from time to time, be given to him by any person or persons under whose jurisdiction, superintendence or control he may for the time being be posted.

20. Obligation to Promote the Bank's interest – Every officer or employee shall serve the Bank honestly and faithfully, and shall use his utmost endeavour to promote the interests of the Bank and shall show courtesy and attention in all transactions and dealings with officers of Government, the Bank's constituents and customers."

11. A plain reading of the aforesaid Rules suggests that under Rule 18 every officer shall conform to and abide by these Regulations and shall also observe, comply with and obey all orders and directions which may, from time to time, be given to him by any person or persons under whose jurisdiction, superintendence or control he may for the time being be posted.

12. Rule 20, on the other hand, speaks about obligation of every officer and employee to promote Bank's

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interests. It is stated that every officer and employee shall show courtesy and attention in all transactions and dealings with officers of Government, the Bank's constituents and customers.

13. Thus, the learned Advocate on behalf of the Petitioner submits that Rules 18 and 20 do not speak about any misconduct with regard to mismatch in the receiving and closing balance of the Bank.

14. Therefore, learned Advocate for the Petitioner submits that the Petitioner immediately on detection of mistake with regard to receipt and closing balance of the Bank dated 15th of February, 2021, paid the entire amount so that no pecuniary loss may be caused to the Bank by his negligence.

15. Referring to a Co-ordinate Bench of this Court reported in ***2018 (1) PLJR 134***, ***Navin Kumar Singh v. The State of Bihar through the Principal Secretary, General Administration Department & Ors.***, it is submitted by the learned Advocate for the Petitioner that a casual aberration or a minor lapse in duty or not rising to the expectations on its own, with no serious repercussions, would normally not be sufficient to invite a punishment unless the action complained falls within the confines of the term 'misconduct', necessitating an imposition of penalty. The consequences flowing from such

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action has to be that much serious, irreversible and not within the conduct expected of a public servant.

16. On the similar point, he also refers to the decision of the Hon'ble Supreme Court in the case of ***Union of India & Ors. v. J. Ahmed*** reported in ***(1979) 2 SCC 286***.

17. Referring to another decision of the Division Bench of this Court passed in the case of ***General Manager, State Bank of India & Ors. v. Ajay Kumar***, reported in ***2018 (2) PLJR 533***, it is submitted by the learned Advocate for the Petitioner that in the aforesaid report, the Petitioner was charged with the allegation of misconduct that he was deliberately over-drafting beyond the limit of three lakhs from his current A/C on 20 occasions rendering the account irregular for a continued period of more than a year.

18. The Division Bench held that the charge against the Respondent employee did not fall in the category of gross misconduct, thus, proceeding against him was bad in law. There was no charge against the Respondent of withdrawing money in excess limit prescribed in loan account without sanction or permission from competent authority. Mere withdrawal of money in excess would not constitute gross misconduct as per bipartite settlement. The Respondent also made good, the

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borrowing by depositing the required money. Therefore, Division Bench affirmed the order of the Writ Court that it is not a case of gross misconduct as there was no charge of causing loss to the Bank.

19. Learned Advocate on behalf of the Respondents, on the other hand, submits that the Petitioner not only tried to suppress shortfall of Rs. 13,000/- in cash on 15th of February, 2021, but in order to conceal his so called *bona fide* mistake, he made interpolation in the balance sheet of the register showing the closing balance. This manipulation by the Petitioner is indicative of his criminal intention to embezzle the fund of the Bank by creating false document. This is gross misconduct on the part of the Petitioner.

20. Referring to a decision of the Hon'ble Supreme Court in the case of ***Lalit Popli v. Canara Bank & Ors***. reported in ***(2003) 3 SCC 583,*** it is submitted by the learned Advocate on behalf of the Respondents that while exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an Appellate Authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the

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case on merits as an Appellate Authority.

21. In ***B. C. Chaturvedi* v. *Union of India & Ors*** [***(1995) 6 SCC 749***], the scope of judicial review was indicated by stating that review by the Court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

22. Referring to the above-mentioned decision, it is submitted by the learned Advocate for the Petitioner that the Petitioner wanted to conceal shortage of Rs. 13,000/- by manipulation, overwriting and introducing false amount of closing balance in the relevant register of Bank account showing shortfall of Rs. 13,000/-. It is not that he showed the actual shortfall in the ledger with a note that due to Bank transaction, there was some mismatch between the cash in hand and the cash which should have been in hand. In such case, both the authority as well as the Court would have asserted the Petitioner's *bona fide* and he might be directed to make good of the loss of the Bank.

23. In the instant case, however, the mismatch was detected by the Inspecting Officer of the Bank and on the following date, the Petitioner withdrew the amount of Rs.

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13,000/- from his personal account and deposited the cash with the Bank. Had it not been detected by the Inspecting Officer, the shortfall might not have been adjusted by paying Rs. 13,000/- by the Petitioner on the following date.

24. It is also submitted by him that payment of Rs. 13,000/- by the Petitioner to the Bank pre-supposes criminal misappropriation of money and the *mens rea* of the Petitioner. It is not the fact that the shortfall occurred due to Bank transaction. On the other hand, shortfall was caused as a result of embezzlement of fund by the Petitioner. Therefore, the Petitioner was rightly subjected to disciplinary proceeding. The disciplinary proceeding was conducted in fair manner. The Petitioner was given adequate chance to prove his innocence and on consideration of the entire evidence on record, disciplinary authority passed the order of compulsory retirement against the Petitioner. Therefore, there is no reason for this Court to interfere with the said order.

25. Having heard the learned Advocate on behalf of the Petitioner and Respondents and on careful perusal of the entire materials on record, this Court at the outset records that the Hon'ble Supreme Court in ***Ravi Yashwant Bhoir v. Collector & Ors.***, reported in ***(2012) 4 SCC 407*** held that the

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expression "misconduct" has to be understood as a transgression of some established doctrine and definite rule of action, a forbidden act, any unlawful behavior which is willful in character.

26. The Court has held that the expression "misconduct" has to be construed and understood in reference to the subject-matter and context wherein the term occurs, taking into consideration the scope and object of the statute which is being construed.

27. It has also been held that the act of misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of such act as to whether it has been detrimental to the public interest.

28. In the instant case, it is not denied by the Petitioner that on 15th of February, 2021, there was a shortfall of closing account of the Bank by Rs. 13,000/-. The shortfall was detected by the Inspecting Officer. It is also detected that in order to conceal the shortfall, the Petitioner made some manipulation in the closing register of the Bank and showed the closing balance as Rs. 3,88,805/- but on physical verification it was found that a sum of Rs. 3,75,805 were lying in the cash safe of the Bank. He recorded 743 numbers of currency notes of Rs.

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500/- denomination in the Bank closing account register but on physical verification 26 numbers of Rs. 500/- denomination currency notes were found short. Thus, there was mismatch between the account closing register and the account in the hand of the Bank after closure of business hours on 15th of February, 2021. The Petitioner claimed that such shortage of money was due to human error or act of inadvertence. If the said incident was an act of inadvertence or human error, there would not have been any occasion for the Petitioner to deposit the said sum from his pocket. The subsequent act of the Petitioner depositing the money shows that the said money was taken by the Petitioner for his personal use.

29. As per the Banking regulation, the Petitioner is under obligation to abide by the Regulations and orders. By taking away the money from the Bank unauthorizedly, the Petitioner did not follow and abide by the Regulations of the Bank.

30. Therefore, this Court is of the view that the inquiry officer rightly found the Petitioner guilty for misconduct.

31. Now it is to be looked into as to whether for the act of the Petitioner, stated above, he was liable to major penalty

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of compulsory retirement under the facts and circumstances of the case.

32. In the instant case, the Inspecting Officer found shortage of Rs. 13,000/- in the cash safe of the Bank, after the Banking hours and closure of accounts on 15th of February, 2021. From the very beginning, the Petitioner took this plea that when it was detected that there was shortfall of Rs. 13,000/-, he tried to make a contact with his senior officers over telephone. He submitted a call details report before the inquiry officer to show his *bona fide* that he wanted to inform the matter regarding shortfall of cash to his superior officers but unfortunately they could not be contacted. Neither the inquiry officer nor the disciplinary authority, nor the Appellate Authority discussed about the call records submitted by the Petitioner before the inquiry officer. It is also found that immediately on the following date, the said amount was deposited in the Bank by the Petitioner to square up the shortfall.

33. Under such circumstances, this Court is of the view that purpose of justice shall be sub-served if the Petitioner would be punished with minor penalties.

34. Accordingly, this Court holds that for the present

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act, the Petitioner should be punished with minor penalty and while imposing minor penalty, the disciplinary authority shall consider that previously Petitioner was not charged with any misconduct. The case in hand is the lapse committed by the Petitioner for the first time. The disciplinary authority shall also consider this aspect of the matter while passing minor penalty to the Petitioner.

35. In view of the above finding, the orders passed by the disciplinary authority, dated 22^{nd} of July, 2022, contained in letter No. HO/DAB/15/22-23/No.50 and the Appellate Authority dated 29^{th} of October, 2022, contained in Letter No. HO/DAD/15/22-23/No. 110, are quashed and set aside.

36. The case of the Petitioner is remitted back to the disciplinary authority to impose minor penalty as per Rule 39 (1) (a) of the said Regulations.

37. The instant writ petition is, accordingly, disposed of with above order.

(Bibek Chaudhuri, J)

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CAV DATE	09.05.2024
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Transmission Date	

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