**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.19367 of 2016**

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Arbind Tiwary S/o Late Arjun Tiwary, Resident of Village Chagori, P.O.- Sesmba, P.S.- Shakurabad, District- Jehebanad Bihar.

... ... Petitioner/s

Versus

1. The Chairman Central Bank Of India Chadra Mukhi, Nariman Point Mumbai (Maharastra), 400021
2. The Zonal Manager, Central Bank of India, Zonal Office, Maurya Lok Complex, Patna.
3. The Regional Manager, Central Bank of India, Regional Office, Mourya Lok Complex, Patna.
4. The Deputy Regional Manager Central Bank of India Regional Office Koshichowk, Saharsa.
5. The Branch Manager, Central Bank of India, Goura Branch Begusarai Bihar.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Ajit Kumar, Advocate |
| For the Bank | : | Mr.Ajit Kumar Sinha, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**
**ORAL JUDGMENT**
**Date : 16-05-2024**

Heard Mr. Ajit Kumar, learned counsel appearing on behalf of the petitioner and Mr. Ajit Kumar Sinha, learned counsel for the Central Bank of India.

2. The petitioner, who faced by the order of dismissal, has now superannuated.

3. A request has been made by Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of the Central Bank of India that a counter affidavit is required to be filed but no reason has been provided by Mr. Ajit Kumar Sinha, learned counsel, as to why till date the counter affidavit not been filed. The writ petition is pending since 01.12.2016.

4. It is the case of the bank that the petitioner, who was Cashier at the relevant point of time, had to deal with the money of the depositor and the customer for having not acted in due diligence faced with removal from the service. Whereas the petitioner, soon after the alleged misappropriation was detected, had returned the amount to the bank.

5. This Court finds from the record of the case that the proceeding relating to the disciplinary action taken against the petitioner by the Disciplinary Authority is not on record.

6. The petitioner is aggrieved by the administrative order contained in **Annexure 7, 7/1 and 9** to the writ petition, which is re-produced *inter alia* hereinafter as under :-

**"<u>CHARGE</u>**

*Mr.Tiwari while working in Gaura branch on 05.03.2013 over receipt and payment counter prepare two fictious pay in slips for Rs.25,000/- and Rs.30,000/- of SB A/C No.2326218981 fav. Girish Kumar Rai scrolled in the computer but did not deposit cash amount of Rs.55,000/- in Bank's safe. Thus, on 05.03.2013, the safe was closed with less amount of Rs.55,000/-. Due to this acts of Shri Tiwari bank has suffered a financial loss of Rs.55,000/- and Shri Tiwari damaged the image of the bank.*

*……. Further, Mr. Tiwari was also involved in misappropriation of cash at Mohanpur Branch for which he was served a charge sheet No.RO/DAW/2009-10/123 dated 23.02.2010 and following punishment was awarded to him.* ***"Stoppage of one increment without cumulative effect in terms of Clause (6) of the MOS dated 10.04.2002".*** *A FIR was also lodged both the times i.e. on 08.06.2010 for previous misappropriation*

> *and on 01.11.2013 (case No.234/13) for the recent misappropriation. At present Mr. Tiwari is on bail.*
>
> *I have considered the contention of the CSE and the defence arguments and the objection raised by Defence. After considering all the materials facts brought before the enquiry and its related aspects and looking to the gravity of the charge I, as Disciplinary Authority award the following punishment on each of the charges as per the memorandum of settlement dated 10.04.2002."*

7. From perusal of order dated 14.10.2014, I find that the representation of the petitioner, in reply to charge-sheet RO/HRD/DAD/2013-14/43 dated 17.08.2013, has not at all been discussed and the consideration in this regard is worth to be taken note of .

8. The petitioner is faced with stoppage of one increment without cumulative effect in terms of Clause (6) of the Memorandum of Settlement (MOS) dated 10.04.2002.

9. Whereas in view of the Memorandum of Settlement (MOS), the Disciplinary Authority without considerating the charge memo and the representation of the petitioner has proceeded to impose punishment as under :

> *"Be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due in terms of Clause 6(b) of Memorandum of Settlement (D&P) for workmen dated 10.04.2002."*
>
> *Mr. Twari will not get any difference in salary and other benefits for the period for which he remained under suspension other than the subsistence allowance being already paid to him.*

10. This Court is surprised by the conclusion, which has been drawn by the Disciplinary Authority is not based on the charges levelled against the petitioner nor has considered the explanation of the petitioner, pursuant to the charge-sheet dated 17.08.2013. I do not find it proper that the petitioner can be inflicted with punishment of dismissal from the service without consideration made in terms of Clause 6(b) of the Memorandum of Settlement dated 10.04.2002. The order of removal bearing no.RO/HRD/DAD/2014-15/75 dated 16.10.2014 passed by the Deputy Regional Manager, Central Bank of India, Saharsa (respondent no.4) is not sustainable in the eye of law and the same is set aside and quashed.

11. In the light of the law laid down by the Apex Court in the case of **B.C.Chaturvedi V. Union of India & Ors.** reported in **(1995) 6 SCC 746,** the matter is remitted back to the Disciplinary Authority to proceed afresh in accordance with law.

12. At this stage, Mr. Ajit Kumar, learned counsel appearing on behalf of the petitioner seeks to file a detail representation in the form of his defence before the Disciplinary Authority (The Chief Manager, Central Bank of India, Regional Office, Maurya Lok Complex, Patna).

13. Considering the limited relief(s) as prayed for on behalf of the petitioner, I find that the order passed by the Disciplinary Authority and the consequential order shall not prejudice the Zonal Manager, Central Bank of India, Zonal Office, Maurya Lok Complex, Patna (respondent no.2), who has passed the order against the petitioner dismissing him from service, which is against the rule of law in the democratic set up of the country because any grave charge of misconduct or fraud committed by an employee can not be subjected to punishment by the whims of the Officer of the Bank holding the charge of the Disciplinary Authority.

14. The concerned Disciplinary Authority (respondent no.2) is directed to consider the representation of the petitioner within a period of six weeks from the date of communication of this order and take a final decision after giving due opportunity of hearing to the petitioner.

15. With the above observation/direction, the present writ petition stands disposed of.

**(Purnendu Singh, J)**

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| **AFR/NAFR** | |
| **CAV DATE** | NA |
| **Uploading Date** | 17.05.2024 |
| **Transmission Date** | NA |