IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6185 of 2016

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Jaimangal Prasad Son Babunand Jee, Resident of village- Dhobhan, P.o.- Dhobhan Bazar, P.S.- Ara Mufassil, District- Ara

... ... Petitioner/s

Versus

1. Madhya Bihar Gramin Bank through its Director Head Office, Meena Plaza, South of Museum, Patna.
2. Board of Director-cum-Appellate Board, Madhya Bihar Gramin Bank, Head Officer, Patna
3. Chairman-cum-Disciplinary Officer, Madhya Bihar Gramin Bank, Head Officer, Meena Plaza, South of Museum, Patna
4. General Manager, Madhya Bihar Gramin Bank, Head Officer, Meena Plaza, South of Museum, Patna
5. Chief Manager, Madhya Bihar Gramin Bank, Head Officer, Meena Plaza, South of Museum, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binod Kumar Sinha, Advocate.
For the Bank : Mr. Suresh Prasad Singh No.1, Advocate.
Ms. Rashmi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 03-09-2024

Heard Mr. Binod Kumar Sinha, learned counsel appearing on behalf of the petitioner and Mr. Suresh Prasad Singh No.1, learned counsel along with Ms. Rashmi, learned counsel for the respondent-Bank.

2. The writ petition was heard at length on 01.08.2024 and on the request of the respective parties, matter was adjourned.

3. The petitioner has filed the writ petition for

quashing of the order dated 29.10.2015, passed by the Appellate Board of the Madhya Bihar Gramin Bank, whereby the order dated 10.07.2015 passed by the Chairman cum Disciplinary Authority whereby the penalty of "Reduction to two lower stage in Time Scale of pay for two years with further direction that Shri Prasad will not earn increment of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of his pay under Regulation 39(1)(b)(i) Madhya Bihar Gramin Bank (Officers and Employees) Service Regulation 2010", that has been affirmed by the Appellate Board and further the petitioner has prayed to exonerate from all the charges made in charge memo dated 19/21.04.2014.

BRIEF FACTS

4. The petitioner joined as clerk cum cashier on 17.12.1984 in the erstwhile Bhojpur Rohtas Gramin Bank. Subsequently, he was promoted as Officer scale-1 on 03.07.2012. When he was posted in Branch Darihat as Assistant Manager, he was put under suspension vide order dated 31.08.2013 by the General Manager of the bank under Regulation 46 of the MBGB (Officers and Employees) Service Regulation 2010, for committing certain serious irregularities such as embezzlement of funds, Unauthorised transactions

through KCC Accounts when he was posted at BO Chitaon, Rohtas. However for such irregularities, an FIR bearing Dinara P.S. vide No. 207/2013 was lodged, in which charge sheet has been submitted and the case is pending.

SUBMISSION ON BEHALF OF THE PETITIONER

5. Learned counsel for the petitioner would submit that on 19/20.04.2014, the petitioner was served with charge memo, seeking his explanations within fortnight. The petitioner had submitted his reply on 09.05.2014 which was not found satisfactory and the Disciplinary authority decided to constitute departmental enquiry to ascertain imputations of charges and vide Letter No.3595 dated 22.05.2014 appointed Enquiry Officer and Presenting Officer and the petitioner was also noticed. During course of enquiry, the management has produced the documentary evidences ME-1 to ME 15, whereas the defence has examined DE-1 to DE-17 and DW-1 to DW-6 including the petitioner himself, however the main defence taken by the petitioner would be that the premises was congested and thus, it was difficult to keep the USER ID and password secret, and thus, it was misused by one Shashi Bhushan Dubey who was part time sweeper. Since the transferred amount was re-deposited in the account, there was no loss caused to the Bank, and thus the petitioner seeks to be

exonerated from the charges.

SUBMISSION ON BEHALF OF THE RESPONDENT

6. Learned counsel for the respondents would submit that the enquiry officer held that "From the charge No1(A), it transpires without having any voucher, different amounts have been transferred from the KCC accounts and these all transfers were made by the USER ID of the petitioner, and thus taking the plea that Shashi Bhushan Dubey has hacked his USER ID and transferred the said amount is not acceptable, particularly as such transfers made since July 2011 to till January 2012 within span of six months which is a long time, and so far hacking of his USER and PASSWORD is concerned, the petitioner has himself accepted that from the date of joining, the activities of Shashi Bhushan Dube was noticed by him to be suspicious and allegedly he made complaint to the Branch Manager to remove alleged Shashi Bhushan Dubey, meaning thereby he was well known to the suspicious activities of Shashi Bhushan Dubey, but he did not change his USER ID and PASSWORD from time to time. The petitioner having not given any convincing reply nor he had produced any evidence in this regard.

7. Heard the parties.

8. On consideration of the pleadings made in the

writ petition and the counter affidavit, I find that the Enquiry report was submitted on 08.04.2015 (Annexure-5) wherein the charge no.1(A) has been found partly proved and the charge No.1(B) has been held as not proved.

9. The competent authority sent a notice with the copy of the enquiry report, seeking comments of the petitioner, and the petitioner submitted the same on 25.04.2015.

10. Thereafter on 10.07.2015, the Chairman cum Disciplinary Authority has passed the order of punishment "Reduction to two lower stage in Time Scale of pay for two years with further direction that Shri Prasad will not earn increment of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of his pay under Regulation 39(1)(b)(i) MBGB (Officers and Employees) Service Regulation 2010".

11. The petitioner preferred appeal against the order dated 10.07.2015 before the appellate board of the Bank on 22.08.2015, thereafter the appellate board perused the Memo of appeal, Disciplinary order, the enquiry report and the evidences lead by the parties, and after that vide order dated 29.10.2015 the appellate board has passed a speaking and reasoned order and held that, After considering all the facts and

circumstances of the case as discussed hereinabove and in the light of points raised in the appeal, the appellate board had found no merit in the appeal filed by the petitioner. Considering the gravity of charges found proved in the departmental inquiry, the punishment of "*Reduction to two lower stage in Time Scale of pay for two years with further direction that Shri Prasad will not earn increment of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of his pay under Regulation 39(1)(b)(i) MBGB (officers and Employees) Service Regulation 2010" awarded to Sri Jai Mangal prasad is proportionate to the irregularities committed by him the appeal is hereby dismissed and. the major penalty imposed upon him by the disciplinary authority is here by affirmed."* Against the said orders, the petitioner has moved before this court.

12. A counter affidavit has been filed on behalf of the respondent-Bank stating therein that the writ application is devoid of merit, wholly misconceived, and is fit to be dismissed, as there is no procedural lapses in the entire departmental proceeding conducted adhering to the principles of natural justice, and the impartiality of the enquiry officer may be seen that finding no substantive evidence against the charge no.1(B), he has held the same as not proved, thus it is also not the case,

where the enquiry may be said as partial, hence in that view of the matter also, no interference in the impugned orders is required, as the departmental proceeding is based on preponderance of probability. However, transferring the amount of the customers by his own USER ID, is a serious financial misconduct, for which even punishment of dismissal from the service could had been passed, as the Bank official are supposed to maintain highest degree of integrity and honesty in dealing with public fund, but a lenient view has already been taken by the respondents while awarding punishment of only Reduction to two lower stage in Time Scale of pay for two years with cumulative effect, hence in that view of matter the punishment awarded against the petitioner is wholly commensurate with the charge proved, which does not warrant interference.

ANALYSIS

13. It is well settled that the petitioner who was cashier of the respondent Bank was required to follow the Regulation of the Bank and he did not care to stop the ulterior motive of the sweeper for long period of time is by itself a misconduct. In this regard, I find it proper to rely upon a judgment of the Apex Court in the case of **Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnaik** reported in **1996 (9) SCC 69** which is, *inter alia*

reproduced hereinafter :

> *"No organization, more particularly, a Bank can function properly and effectively, if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks, which deal with public funds. If what we hear about the reasons for the collapse of* ***Barings Bank*** *is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned herein-before, the very discipline of an organisation and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of the Regulation. No further proof of loss is really necessary, though, as a matter of fact, in this case there are findings that several advances and over-drawals allowed by the respondent beyond his authority, have become sticky and irrecoverable. Just because, similar acts have fetched some profit- huge profit, as the High Court characterises it - they are no less blameworthy."*

14. The question arises whether the act of the petitioner constitute a misconduct.

15. It is gainful to quote the definition of misconduct defined in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

16. In the case of **M.M. Malhotra Vs. Union of**

India reported in **(2005) 8 SCC 351**, the Apex Court held that

> *"the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct. 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 day. 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 term occurs, having regard to the scope of the statute and the public purpose it seeks to serve."*

17. It is well-settled by the Apex Court that, *"an error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through*."

18. The Disciplinary Authority on the basis of the conclusion drawn by the Enquiry Officer found that the charge No. 1(A) i.e. without any mandate/withdrawal slips, amount from various KCC accounts were transferred and credited in SB account with the connivance of Shri Madan Mohan Ojha, held to be proved, whereas, the allegation of fraudulent withdrawal of such amount could not be established. As such, the Enquiry

Officer has fairly and justifiably arrived at that the charge no.1(A) is partially proved and Charge no.1(B) is not proved and thereafter, the Disciplinary Authority and the Appellate Authority have also gone through the entire records and considering each of the material on records, found no infirmity and perversity in the findings of the Enquiry Officer, and thus the impugned orders are safely said, as commensurate with the charges proved.

19. In above background of the fact whether the impugned orders dated 10.07.2015 and 29.10.2015 requires interference of this Court.

20. The Apex Court in the case of ***Union Of India Vs P. Gunashekaran,*** *reported in* ***(2015) 2 SCC 610*** held, *inter alia*, as follows:

> "*The High Court is not constituted in a proceeding under Article 226 of the Constitution, a court of appeal over the decision of the authorities, holding a departmental enquiry against a public servant: it is concerned to determine, whether, the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry, has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence*".

21. A similar view is expressed, wherein the scope of judicial review is explained in the case of ***General***

Manager (Operation-1)/ Appellate Authority, UCO Bank And Others Vs. Krishna Kumar Bhardwaj, reported in ***(2022) SCC OnLine SC 201***, wherein the Hon'ble Supreme Court has held, *inter alia*, as follows:

> "*So far as, the scope of judicial review in the matters of disciplinary inquiry is concerned, it has been settled that the constitutional courts, while exercising their power of judicial review under Articles 226 or 227 of the Constitution, would not assume the role of the appellate authority, where jurisdiction is circumscribed by limits of correcting errors of law or procedural errors, leading to manifest injustice or violation of principles of natural justice. At the same time, the power of judicial review is not analogous to adjudication of the case on merits as an appellate authority.*

22**.** The main stand taken by the petitioner is that there is no financial loss caused to the Bank, as the amount of loss has been deposited back. The petitioner has not produced any cogent evidence and also not given any explanation that once he was known that activity of alleged Shashi Bhushan Dubey from very inception of his joining to be suspicious, he had not changed his USER ID/PASSWORD. The Enquiry Officer concluded that the charge of fraudulent transfers were held to be partially proved.

23. The record reveals that the petitioner had failed to take sincere steps to protect the interest of the Bank and to discharge his duties with utmost devotion and diligence and

petitioner having held responsible for the financial loss caused to the Bank which comes under misconduct, as the petitioner was found to have committed lapses /irregularities.

24. In the light of the above settled judicial pronouncement, I find that the act of the petitioner cannot constitute negligence rather the same constitute misconduct committed with the malafide intention. Hence, I don't find any illegality in the order passed by the authorities and accordingly the writ petition stands dismissed.

25. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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