**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.20058 of 2011**

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AGAM PRASAD SRIVASTAVA Son Of Late Jay Madhav Prasad Srivastava Resident Of Village-Khirhar, Police Station-Harlakhi, District-Madhubani, At Present Residing At Professors' Colony, West Of Private Bus Stand, Madhubani, Police Station-Madhubani Town, District-Madhubani.

... ... Petitioner/s

Versus

1. UTTAR BIHAR GRAMIN BANK having its head office at Kalambagh Chowk, Muzaffarpur-842001 through its Chairman.
2. The Chairman, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur-842001.
3. The Chief Manager, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur-842001.
4. Area Manager, Uttar Bihar Gramin Bank, Madhubani.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Suresh Pd. Singh, Advocate |
| | : | Mr. Manoj Kumar Jha, Advocate |
| For the Respondent/s | : | Mr.Prabhakar Jha, Advocate |
| | : | Mr. Amitesh Jha, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**
**ORAL JUDGMENT**
**Date : 27-06-2024**

Heard Mr. Suresh Prasad Singh, learned counsel appearing for the petitioner assisted by Mr. Manoj Kumar Jha, learned Advocate and Mr. Prabhakar Jha, learned counsel appearing for the respondent-Bank assisted by Mr. Amitesh Jha, learned Advocate.

2. This writ application has been filed for the following reliefs:

(I) For quashing the Head Office Order No. DAW/02/09-10/268, dated 03.09.2009 issued under the signature of Chairman-cum-Disciplinary Authority, Uttar Bihar Gramin Bank (hereinafter referred to as 'UBGB'), as contained in Annexure-1, by which after conclusion of departmental proceeding, consolidated punishment of removal from service, which shall not be disqualification for future employment in terms of Regulation 38 (1) (b) (iv) of Uttar Bihar Gramin Bank (Officers and Employees) Service Regulation, 2008, has been awarded against the petitioner and in terms of regulation 46 of the aforesaid regulation, it has further been directed that the petitioner shall not be entitled for payment of salary/allowances for the period of suspension, other than what he has received as subsistence allowance.

(ii) For quashing the HO/DAD/04/11-12/No 18, dated 02.04.2011 issued under the signature of Chief Manager, UBGB, Kalambagh Chowk, Muzaffarpur, as contained in Annexure-2, by which Board of Directors of the Bank-cum-Appellate Authority did not find any reason to interfere with the findings/punishment awarded by the Enquiring Officer/Disciplinary Authority and up-held the punishment awarded to the petitioner.

(iii) For holding that the impugned order of punishment of removal from services has been awarded to the petitioner without there being any material to substantiate the charges framed against the petitioner and the punishment of removal from services is excessive and shocking to conscience and not commensurate to the charges framed against the petitioner.

(iv) For commanding the respondents to reinstate the petitioner in service on the post he was holding with effect from the date of issuance of the impugned order of removal of the petitioner, i.e. 03.09.2009 along with all consequential benefits including payment of full salary of the period of suspension.

(v) For grant of any such other relief or reliefs for which the petitioner is legally found to be entitled in the facts and circumstances of this case.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Field Supervisor in Madhubani Kshetriya Gramin Bank and was posted in Belauncha Branch and after completion of period of probation, the service of the petitioner was confirmed.

4. Learned counsel for the petitioner submits that while the petitioner was working in Branch Khirhar and internal audit was started from 05.12.2005, however till the petitioner was posted there, there was no irregularity found, however vide Letter no.29 dated 10.12.2005, petitioner was directed join to Tamuria Branch. Thereafter vide Head Office letter No. 74, dated

23.06.2006 the petitioner was placed under suspension with immediate effect in contemplation of disciplinary proceeding. During the period of suspension, headquarter of the petitioner remained at Tamuria Branch itself. Learned counsel for the petitioner further submits that the petitioner has received a letter of the Area Manager, UBGB, the petitioner was instructed to deposit a sum of Rs.91,959/- in the Nominal account of Khirhar Branch of the Bank. The petitioner deposited an amount of Rs. 91,959/- in the Nominal account of the Khirhar Branch of the Bank on 20.07.2006. Vide Headquarter letter No. 129, dated 26.07.2006 a memo of charges as well as article of charges was issued to the petitioner and petitioner was directed to submit his reply through Tamauria Branch within 15 days. Learned counsel for the petitioner submits that by the aforesaid memo dated 26.07.2006 altogether 24 charges were framed against the petitioner and he was also asked to give the name of any officer to present his case, if he himself is unable to defend himself. The petitioner submitted his written reply through Tamauria Branch denying all the charges as levelled against him and without considering the explanation submitted by the petitioner in respect to the aforesaid charges, decision was taken to initiate departmental enquiry against the petitioner and after initiation of departmental proceeding, the

Inquiry Officer directed the petitioner to submit the list of oral and documentary evidences in three copies.

5. Learned counsel for the petitioner submits that the list of oral and documentary evidences, by which the charges were to be proved against the petitioner should have been given to the petitioner along with memo and article of charges issued to him vide Memo No. 129, dated 26.07.2006 but neither the list of oral or documentary evidence, nor the copy of the documents relating to the charges were given to the petitioner along with Memo No. 129 dated 26.07.2006. The date of enquiry proceeding was fixed on 15.11.2006, 16.11.2006 and 27.11.2006, but the list of the oral or documentary evidences was not submitted by the management representative. On 08.12.2006 the petitioner submitted the consent letter of Sri Vedanand Sah, Branch Manager, Kapileshwar Sthan Branch of the Bank to act as Defence Representative and Sri Vedanand Sah also appeared in enquiry proceeding on 08.12.2006. The management representative without giving list of the oral and entire list of documentary evidences, submitted 66 number of Management Exhibits on 08.12.2006, but did not furnish the copies of the same to the petitioner on the said date. On 04.01.2007 again the management representative submitted the copies of Management Exhibits Nos. 67 to 147, but the copies

whereof were not supplied to the petitioner. The management representative submitted on that date that he will submit the list of management witnesses on the next date and the next date was fixed on 06.01.2007. On 06.01.2007 copy of the Management Exhibit Nos 148 to 172 were placed by the management representative and the copies of Exhibit Nos. 1 to 172 were given to the petitioner on that date and it appears from the aforesaid that the management representative although submitted copy of the management exhibits.

6. Learned counsel for the petitioner submits that on 08.05.2007 the defence representative appeared before the Enquiry Officer and submits that most of the charges show that amount from one account of the Bank was transferred to the another account on the basis of the application and written instructions of the account holders. The written instructions have been kept in the miscellaneous files of the Bank and prayer was made for calling for the written instructions of the account holders from the miscellaneous files of the Khirhar Branch of the Bank. Learned counsel for the petitioner submits that the disciplinary authority by H.O. letter No. DAW/01/08-09/311 dated 08.12.2008 served the findings of the Enquiry Officer dated 01.09.2008 and holding that all the charges, i.e. charge Nos. 1 to 24 as proved and advised the

petitioner to submit his comments in respect to the findings of the Enquiry Officer within 15 days of receipt of the letter. In compliance to the aforesaid letter of the Disciplinary Authority, the petitioner submitted his reply to the second show cause notice on 30.12.2008. Learned counsel for the petitioner submits that according to Rule 44 of the Rules and procedure for holding departmental enquiry adopted by Madhubani Kshetriya Gramin Bank, the Chairman-cum-Disciplinary Authority, was required to decide the quantum of punishment to be awarded to the petitioner after giving second show cause notice to the petitioner and affording an opportunity of hearing to him but the same has not at all been followed by the Disciplinary Authority and without going through the second show cause reply submitted by the petitioner and without proper application of mind to the facts and circumstances pointed out by the petitioner for rejecting the findings of the Enquiry Officer, impugned order of punishment of removal of the petitioner from service as well as non-payment of full salary for the period of suspension was passed by the Chairman-cum- Disciplinary Authority vide H.O/DAW/02/09-10/268, dated 03.09.2009.

7. Learned counsel for the petitioner submits that being aggrieved by and dissatisfied with the impugned order dated

03.09.2009 the petitioner preferred an appeal on 21.10.2009 before the Board of Directors of the UBGB enumerating all the facts and grounds in detail and prayed for setting aside the impugned order dated 03.09.2009 passed by the Disciplinary Authority. The appellate authority without considering the case of the petitioner in proper perspective did not find any reason to interfere with the findings/ punishment awarded by the Enquiring Authority/ Disciplinary Authority and upheld the punishment awarded to the petitioner and the same was communicated to the petitioner vide letter dated 02.04.2011. Learned counsel for the petitioner submits that the impugned orders are based on wrong assumption of facts, extraneous and irrelevant consideration. The defence exhibits relating to aforesaid charges details for which has been given in tabular chart enclosed with second show cause were not accepted by the Inquiry Officer on the ground that the account holders who had given due instruction to the Branch Manager were not examined by Inquiry Officer. The Inquiry Officer as well as Disciplinary Authority have in not accepting the defence as well as management exhibits relating to the aforesaid charges.

8. Learned counsel for the petitioner submits that it appears that from the aforesaid that without there being any material substantiate the charges against the petitioner and the

punishment of removal from service is passed which is disproportionate and not commensurate with the alleged charges, and thus any alternative punishment other than removal from service may be passed, remanding the matter back to the Respondents to reconsider the quantum of punishment and the authority may substitute the order of penalty as such compulsory retirement or reduction of scales of pay, taking into consideration the unblemished past service of the petitioner, as dismissal not only affect the employee rather his dependents who has committed no fault and learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of **Rabin Chandra Sarma Vs. Central Bank of India & Ors, in W.P.(C) No.1319 of 2009 decided on 13.07.2017**, paragraph-11,12,13,14,15 which are being reproduced hereinbelow:

> "11. *As already concluded hereinabove, even if the charges as well as the findings against the petitioner are taken to be true in its face value, there is no such indication either in the charge or in the company report that the petitioner had indulged in any such undue act resulting in any financial loss to the bank by such act. As the punishment of dismissal has been inflicted on the petitioner on the premises that the*

*petitioner had committed financial anomalies, this Court is of the view that such conclusion of the respondent bank authorities to justify the punishment of dismissal from service is unreasonable and without there being any material basis for the same.”*

“12. *In view of such conclusion, this Court is of the view that the decision of the bank authorities to inflict the punishment of dismissal from service was a decision which a reasonable person could not have taken and as such, the said decision is in violation of one of the Wednesbury principles.”*

“13. *In this respect, the Hon'ble Supreme Court, in Om Kumar vs. Union of India reported in (2001)2 SCC 386 in paragraph-71 was of the view that where an administrative decision relating to punishment in disciplinary cases is questioned as arbitrary under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority and the Court while reviewing the punishment is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment*

*Paragraph-71 of the aforesaid judgment is as follows:*

*"Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment"*

*"14. In B.C. Chaturvedi vs. Union of India reported in (1995) 6 SCC 749, the Hon'ble Supreme Court was of the view that if the punishment imposed by the disciplinary authority shocks the conscience of the tribunal, it would be appropriately mould the relief, either directing the disciplinary authority to re-consider the penalty or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. Paragraph-18 of the judgment is quoted herein below-*

*"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment*

*imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."*

"15. *In view of the aforesaid provisions of law as enunciated by the Hon'ble Supreme Court, coupled with the findings of this Court that there is no reasonable basis for the respondent bank to arrive a conclusion that the petitioner had caused serious financial irregularities, resulting in any dune financial benefit to himself or has caused any financial loss to the bank, this Court is of the view that the decision to the inflict punishment of dismissal from service is decision which a reasonable man could not have arrived at and the said is highly arbitrary and shocks the conscience of the Court."*

9. Learned counsel for the petitioner has further relied upon the judgment of the Hon'ble Apex Court in the case of

**Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank & Ors**, reported in **2003(3) Supreme 318**, paragraph-7 and 9 of the said judgment which are reproduced hereinbelow:

> *"7. This Court in Union of India & Anr. vs. G.Ganayutham [(1997 7 SCC 463] considered the question whether judicial review powers in administrative law permit the High Courts or the administrative tribunals to apply the principle of "proportionality". In the said judgment, reference is made to leading cases in England and also to the rulings of this Court touching the question of "proportionality". In para 15, reference is made to the case of Ranjit Thakur vs. Union of India & Ors. [(1987) 4 SCC 611). In that case, after finding the appellant guilty in court martial, he was dismissed from service and a sentence of imprisonment was also imposed as permitted by Army Act. While quashing the said punishment on the ground that it was "strikingly disproportionate", this Court, in para 25 observed thus:-*

*"25.... The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concert of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."*

*"9. A Bench of three learned Judges of this Court in B.C.Chaturvedi vs. Union of India & Ors. [(1995) 6 SCC 749], while dealing with the power to interfere with the punishment imposed by the disciplinary authority, in para 17, stated thus:-*

*"The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa vs. Bidyabhushan Mohapatra (AIR 1963 SC 779) held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie*

*made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in Union of India vs. Sardar Bahadur [(1972) 4 SCC 618}. It is true that in Bhagat Ram vs. State of H.P. [(1983) 2 SCC 442] a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to if by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami vs. State of T.N. [(1989) supp. 1 SCC 686], a Bench of three Judges of this Court, while considering the power to interfere with the order of* *punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India case where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment."*

10. Learned counsel for the petitioner further relied upon the judgment in the case of **Ranjit Thakur Vs. Union of India and Ors.in Civil Appeal No.2630 of 1987 (arising out of Spl. Leave Petition No.10899 of 1986) decided on 15.10.1987,**

paragraph-9 of the said judgment which is being reproduced hereinbelow:

> "9. *Re: contention (d): Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of B logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 Weekly Law Reports 1174 (HL) Lord Deplock said:*

*"... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground l would call 'illegality'. the second irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community ............................"*

*In Bhagat Ram v. State of Himachal Pradesh, A.I.R. 1983 SC 454 this Court held:*

*"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."*

*The point to note, and emphasise is that all powers have legal limits.*

*In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review. "*

11. Learned counsel for the Bank submits that there is no infirmity in the impugned order and the proceeding was initiated against the petitioner and concluded in accordance with Rule and ample opportunity has been given to the petitioner to defend his case, the petitioner has violated the norms of the Bank and committed gross irregularities which caused financial loss to the Bank also and the Banking Institution is an institution and hope and trust of public at large and the petitioner's act was contradictory to the banking norms and guidelines. The petitioner being a Branch Manager has deposited the public money in his own accounts itself showing defalcation of public money not only that there are several misappropriation of public money committed by the petitioner its come during course of departmental enquiry. The charges levelled against the petitioner was grave and that was proved during course of departmental enquiry itself. The order passed by the disciplinary authority as well as appellate authority

are just and proper after considering the norms of natural justice giving full opportunity to the petitioner to prove his innocence and there is no infirmity in the proceeding and learned counsel for the Bank has relied upon the judgment of Calcutta High Court in the case of **Pranab Kumar Bhuyan Vs. United Bank of India & Ors. in W.P.No.3096 (W) of 2008** and some relevant paragraphs of this judgment, which are being reproduced hereinbelow:-

> *"The respondents had sought to justify their acts on the ground that the petitioner during his tenure as the Deputy General Manager and Chief Regional Manager of the concerned Bank committed certain grave mistakes for which he had been issued a charge sheet. The substance of the charge against the petitioner was that he had failed to take all possible steps to use and protect the interest of the respondent Bank and acted in derogation of Regulation 3(1) and 3 (3) read with Regulation 24 of United Bank of India Officer Employees (Conduct) Regulations, 1976 (the Regulations, for short) in that the petitioner had committed acts of several irregularities. In their affidavit in-opposition the respondents have given a list of the acts alleged to*

*have been committed by him. After considering all the material facts and the findings of the enquiring authority the disciplinary authority concurred in the finding of the enquiring authority and considering the gravity of the misconduct committed by the petitioner decided to impose major penalty of dismissal which shall ordinarily be a disqualification for future employment. The appellate authority also by a manned order confirmed the punishment imposed by the disciplinary authority.*

*The question that principally cropped up for consideration was whether the petitioner was given sufficient opportunity to defend himself and whether there has been any violation of the principles of natural justice in the conduct of the disciplinary proceeding.*

*The order of the disciplinary authority is quite a detailed one and the order of the appellate authority is also specific and detailed. The appellate authority had discussed the factual context of the case, the findings of the enquiring authority, the submissions made by the writ petitioner as well as* *the points taken in the appeal and has discussed each one of them by giving its independent observations. It is a settled principle of law that the writ court cannot sit in appeal over the factual finding arrived at by the disciplinary authority or the appellate authority. This is all the more so when there is a concurrent finding of fact between the appellate authority as well as the disciplinary authority. In the case of Lalit Popli-Vs-Canara Bank and Others, reported in 2003(3) SCC 583 the Supreme Court reiterated the principles of limited scope of judicial review and held that:*

> *"While exercising jurisdiction under Article 226 of the Constitution of India 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 case on merits as an appellate authority."*

12. Learned counsel for the Bank has also relied upon the judgment of the Division Bench of this Court in the case of

**Shibatosh Dutta Vs. The Uttar Bihar Gramin Bank & Ors.**, **L.PA. No.1555 of 2015 decided on 06.03.2018**, paragraph-6 of this judgment which is being reproduced hereinbelow:

> "6. *Reference in this regard is made to a judgment of the Supreme Court in case of* ***Regional Manager, U.P. SRTC,Etawah & Ors. vs. Moti Lal & Anr. reported in (2003) 3 SCC 605 (para 10),*** *wherein it is held that where an employee deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is a must and unexceptionable. The opinion expressed by the learned Single Judge on the nature of the duty discharged and the integrity expected of a bank employee, in reference of the judgments on the issue, is exhaustive and we are persuaded to make reference thereto:*
>
> *"Reference in this connection may usefully be made of the judgment of the Apex Court in the case of Chairman and Managing Director, United Commercial Bank and Others vs. P.C. Kakkar, reported in (2003)4 SCC 364, wherein the Apex Court following its earlier judgment in the case of*

***Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik**, reported in **(1996) 6 SCC 69**, had held as follows:*

*"14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, reported in (1996) 6 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond*

*one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."*

*10. The aforesaid view of the Apex Court has been followed without exception laying down a clear law that in case of misconduct against a Bank Officer involving his integrity the matter should not be treated lightly and/or leniently by the courts. In the case of* ***Ganesh Santa Ram Sirur vs. State Bank of India and Anr.****, reported in* ***(2005)1 SCC 13****, it was held as follows:*

*"34. The Bank Manager/Officer and employees of any Bank, nationalised/or non-nationalised, are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the*

*relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC vs. Hoti Lal reported in 2003(3) SCC 605. Wherein this Court has held as under (SCC p.614, Para 10):-*

*"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to*

*deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."*

*11. Yet again in the case of Canara Bank Vs. V.K. Awasthy reported in (2005)6 SCC 321, the same view was reiterated and so was done also by the Apex Court in the case of State Bank of India & Anr. vs. Bela Bagchi and Others, reported in (2005)7 SCC 435, wherein the law in this regard was laid down in the following words:*

*"15. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the*

*Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, reported in (1996) 9 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance".*

*12. In the case of Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain, reported in (2005)10 SCC 84, while dealing with the* *case of disciplinary proceedings and punishment against a Bank Officer the Apex Court had again followed the same principle.*

*13. There would be infact no need to multiply the authorities on the subject, inasmuch as the same principle was consistently followed again by the Apex Court in the case of State Bank of India & ors. vs. Ramesh Dinkar Punde, reported in (2006)7 SCC 212and also in the caseof State Bank of India & ors. vs. S.N.Goyal, reported in (2008)8 SCC 92, wherein while rejecting the plea of a lesser punishment in relation to similar misconduct of a Bank Officer involving misappropriation/embezzlement of fund it was held as follows:*

*"41. At the relevant point of time the respondent was functioning as a Branch Manager. A Bank survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds*

*of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."*

*14. In the case of General Manager (P), Punjab & Sind Bank and Others vs. Daya Singh, reported in (2010)11 SCC 233, the role of Bank Manager in exercise of his official function and exercising his power with honesty and integrity was summed up in the following terms:*

*"26. In a number of cases includingState Bank of India vs. Bela Bagchi, reported in (2005) 7 SCC 435, this Court has held that a bank employee*

*has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner.*

*27. In Damoh Panna Sagar Rural Regional Bank's case, reported in (2005) 10 SCC 84, the Manager of a Bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorized withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. In spite of a well reasoned order by the Inquiry*

*Officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments."*

*15. In view of the aforesaid view/settled authorities of the Apex Court the plea of the petitioner that he is ready to refund the embezzlement amount for recalling/ reviewing the order of punishment of his dismissal from service must be and is hereby rejected. As a matter of fact a similar plea of bestowing sympathy and generosity in the matter of misappropriation/embezzlement of the Government fund was ejected by the Apex Court in the case of T.N.C.S.Corporation Ltd. vs. K. Meerabai, reported in (2006)2 SCC 235, wherein it was held as follows:*

*"29. Mr. Francis also submitted that a sum of Rs. 34,436.85 being 5% of the total loss of Rs. 6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the*

*respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money mis-appropriated. In the instant case, respondent employee is found guilty of mis-appropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or mis-placed sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment awarded by the disciplinary and Appellate Authority."*

13. In view of the aforesaid, it appears that the petitioner has been given ample opportunity to defend his case and there is no infirmity or irregularity in the proceeding.

14. Having regard to the facts and circumstances of the case and for the reasons mentioned in the order dated 06.03.2018 passed in **LPA No.1555 of 2015, Shibatosh Dutta Vs. The Uttar Bihar Gramin Bank & Ors. (Supra)**, this Court does not find any infirmity or illegality in the order dated 03.09.2009 and order dated 02.04.2011, so as to warrant any interference, hence, the present writ petition stands dismissed being devoid of any merit.

**(Rajesh Kumar Verma, J)**

Nitesh/-

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| **AFR/NAFR** | AFR |
| **CAV DATE** | NA |
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