IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7017 of 2012

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Modanand Jha S/O Late Bhimanand Jha Resident Of Village Lohna, P.S. Bhairav Asthan, District Madhubani.

... ... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank Head Office Kalam Bag Chawk, Town, P.S. and District Muzaffarpur, through its Chairman.
2. The Chairman, Uttar Bihar Gramin Bank, Kalam Bag Chawk, Muzaffarpur.
3. The General Manager, Uttar Bihar Gramin Bank, Kalam Bag Chawk, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Mayanand Jha, Sr. Advocate
	:	Mr. Giridhar Gopal Tiwary, Advocate
For the Bank	:	Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 11-03-2024

Heard Dr. Mayanand Jha, learned senior counsel assisted by Mr. Giridhar Gopal Tiwary, for the petitioner and Mr. Prabhakar Jha, learned counsel appearing on behalf of the Bank.

2. The present writ petition has been filed for setiing aside the decision of the Board of Directors of the North Bihar Rural Bank, Muzaffarpur as contained in letter No. HO/DAD/04/11-12/989 dated 13.01.2012 issued under the signature of respondent no.3 whereby the petitioner has been communicated that the Board has upheld the order of the Disciplinary Authority as contained in memo No. HO/DAW/03/10-11No 302 dated 26.10.2010 whereby the petitioner has been removed from the service.

3. Learned senior counsel for the petitioner submits that the petitioner was a Branch Manager of the Biraul Branch of Mithila Kshetriya Gramin Bank, having its Head Office at Laheriasarai, Darbhanga now it has been merged/renamed as North Bihar Gramin Bank, having its Head Office at Muzaffarpur. On 20.10.2004.the petitioner had gone to village Benipur, Kamalpur and Supaul Bazar Branch of S.B.I. for official works after doing the daily works of the Branch leaving the set of keys of the Bank gates and chest kept in his custody to one Mr. Bhavendra Jha, the Cashier cum clerk of the Bank. There was a theft at the night of 20-21.10.2004 in the Biraul Branch of Gramin Bank of which the petitioner was the Branch Manager by opening the of the main gate, internal doors and the Chest. The petitioner came to know about the incident when he reached the Bank in the morning of the 21.10.2004 at around 10 a.m. and a case under Sections 409 and 120)(B) of the Indian Penal Code was lodged as Biraul P.S. Case No. 110 of 2004. Petitioner was put under suspension vide letter No. 227 dated 05.11.2004 by the Chairman of the Mithila Kshetriya Gramin Bank simply because theft had taken place in his Branch. However, the suspension was revoked by the management vide letter No. 241 dated 23.11.2004 and he started working as the

Branch Manager of the Biraul Branch. A show cause memo was served upon the petitioner on 01.08.2005 and the petitioner filed his reply on 08.10.2005. After submission of his show cause reply the petitioner was confident that the same has been accepted in view of the report of the respondent no.2 to the concerned authority which shows that the Police took the written application lodged by the Branch Manager (petitioner) but did not give any acknowledgment. The Clerk cum Cashier told in presence of all that he had kept both sets of the keys of the Locks of the safe Chest. The management of the Bank initiated a Departmental Proceeding against the petitioner vide letter no. 74 dated 25.01.2006 for leaving the keys with the clerk, going out of headquarters at night and not maintaining the register of the details of notes. The petitioner replied to above memo on 15.02.2006 to the Disciplinary Authority, appeared before the Enquiry Officer on different dates either personally or through his representative and submitted his defence both oral and written showing his innocence and after the enquiry, the Enquiry Officer submitted his report on 30.08.2008 holding the petitioner guilty of charges 1 (part), 2 & 3 and found charge No. 4 as not proved. The Disciplinary authority wrote a letter No. 134 on 10.08.2010 asking the petitioner to submit his comment as to why the disciplinary authority should not differ from the findings of the Enquiry Officer with regard to charge no.1 that the petitioner left the keys of the safe in a careless manner is not proved. The petitioner submitted his comment / reply to the letter No. 134 dated 10.08.2010 on 04.09.2010 stating inter alia that no locks of the main gate and internal doors which were Navtal from Godrej was found on the spot which means that the locks were not opened with their keys rather they were cut/ broken by the thieves. The Chairman of Bank had requested the C.B.I. to investigate the matter regarding theft vide his letter no. 82 dated 08.02.2005 but the Superintendent of Police, Central Bureau of Investigation has refused to do so on the ground that the local police is already investigating the case. The disciplinary authority issued punishment order vide memo Nos. 302/303 dated 26.10.2010 removing the petitioner from service in a mechanical manner.

4. The petitioner preferred Appeal against the order dated 26.10.2010 under Regulation 47 of the Uttar Bihar Bank (Officers and Employees) Service Regulation before the Board of Directors of the Bank on 20.11.2010 pointing out various lapses in the order passed by the disciplinary authority and also raised objection to the findings of the disciplinary authority that

the thief by the keys kept with the branch manager particularly when the clerk cum cashier had admitted that the keys were with him prior to the theft and even after the theft without considering that the opinion of the then Chairman that this petitioner was not responsible for the theft which was exhibited in the departmental proceeding as exhibit No. 12. Appellate Authority did not consider any of the grounds of Appeal and just approved the decision of the Disciplinary Authority in a mechanical manner on the basis of the decision of a committee constituted by the Board on the ground that the petitioner did not produce any fresh material in support of his Appeal ignoring the fact that there were sufficient material in his favour in the Departmental Enquiry and the Appellate Authority is shown that the punishment awarded by the Disciplinary Authority has been accepted in to because the Disciplinary Authority happens to be the Chairman Cum M.D. of the Bank.

5. Learned senior counsel for the petitioner submits that in absence of any forensic report, it is not possible to ascertain as to by which keys the Safe of the Bank as well as gates were opened particularly in view of the fact that another set of the keys are kept in the Head Office of the Bank and it is surprising as to on what basis the respondent has taken the stand

that locks were opened by using original keys available at Branch level alone and the FIR was not lodged for theft rather under Sections 409 and 120(B) of the Indian Penal Code and charge-sheet was submitted against one Bhavendra Jha and Anand Kumar Chaudhary, not against the petitioner. The punishment order awarded to Bhavendra Jha, the Clerk cum Cashier, in whose custody the keys of the bank's safe was on the fateful night, was set aside vide order dated 12.01.2024 passed in C.W.J.C. No. 10725 of 2010. and the case of the petitioner is fallen under the same category because on the same set of charges the petitioner was also facing the proceeding and one Bhavendra Jha had also faced the same charges and lastly submits that there is no break open of the safe locker of the respondent-bank and each key was assigned to the petitioner and Branch Manager and theft of rs. 15,20,849.35/- has taken place in that event there should be a common enquiry under the service regulation of Uttar Bihar Gramin Bank called "Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2008" and Regulation No.41 relates to common enquiry. And the respondent-bank has not complied with the Regulation no. 41 in respect of more than one employee/officer involved in the alleged misconduct. In the present case, theft of a sum of Rs. 15,20,849.35/- from the safe locker of the bank and the alleged allegation is in respect of petitioner and one Bhavendra Jha. The respondents have initiated inquiry and concluded while holding individual inquiry instead of holding a common inquiry. From a bare perusal of the record it is evident that the petitioner has given the safe locker key to one Bhavendra Jha and it appears from the record that the none of the witnesses has been examined and so far proving the alleged charges.

6. Learned senior counsel for the petitioner relies upon a judgment of the Hon'ble Apex Court in the case of ***The Disciplinary Authority-cum-Regional Manager and Ors. Versus Nikunja Bihari Patnaik reported in 1996 (6) SCC 69*** para 6 & 7 of which is quoted hereinbelow;

> *(6) The petitioner unauthorisedly issued Bank Guarantee on behalf of different parties without intimation to R.O. The guarantees were issued and signed by himself as Br. Manager though on behalf of the Bank. While acting as he had not taken counter guarantee in some cases.*
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> *7. While allowing unauthorisedly advances/TOD/other loans, the petitioner had not taken proper documents. Most of the documents taken were blank, undated, unstamped. Thus he had not safeguarded the*

interest of the bank.

He also relies upon a judgment of Hon'ble Apex Court in the case of ***State Bank of India versus Ram Lal Bhaskar & Anr. Reported in 2011 (10) SCC 249.***

He further relies upon a judgment passed in CWJC No. 10725 of 2010 in the case of Bhavendra Jha Versus U.B.G.B who was Cashier Cum Clerk in the same branch and has also challenged the order of the disciplinary authority as well as the appellate authority and the Hon'ble Court vide order dated 12.01.2024 has been pleased to set aside the order. Paragraph nos. 5 & 6 of which is quoted hereinbelow;

> Safe locker of the Bank was having a double locking system and each key was assigned among two staffs, namely, petitioner and Branch Manager. If there is no break open of safe locker of the Respondent-Bank and each key was assigned to the petitioner and Branch Manager and theft of Rs.15,20,849.35/- has taken place in that event there should have been common enquiry under the service regulation of Uttar Bihar Gramin Bank called "Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations-2008

and Regulation No.41 relates to common enquiry. It is necessary to reproduce the Regulation No.41 which reads as under:

> "41. Common Enquiry
>
> Notwithstanding anything contained in these Regulations, if two Officers in different grades or an officer and an employee are involved jointly in an incident and disciplinary proceedings are sought to be instituted against both of them and the Chairman is of the opinion that having regard to the facts and circumstances of the case, the Competent Authority in respect of both the officer and employee should be the same, the Chairman may direct that the Competent Authority in respect of the Officer shall be the Competent Authority in respect of both the officer and employee involved and a common enquiry shall be held into the charges against both of them and the delegation of power to enquire under Regulation 40 and the procedure, with the exception of the final order shall be in

> favour of the same enquiry officer."
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> 6. The respondents have not resorted to Regulation No.41 in respect of more than one employee/Officer involved in the alleged misconduct. In the present case, theft of a sum of Rs.15,20,849.35/- from the safe locker of the Bank and the alleged allegation is in respect of petitioner and Branch Manager. The respondents have initiated inquiry and concluded while holding individual inquiry instead of holding a common inquiry.

7. In the present case also the respondents bank have not resorted to Regulation no.41 in respect of more than one employee/officer involved in the alleged misconduct. The allegation of theft of a sum of Rs. 15,20,849.35/- from the locker of the Bank and the allegation of theft was against the petitioner cashier-cum-clerk and the case of cashier-cum-clerk was allowed (Bhavendra Jha) (*Supra*). The present case is also allowed on the same ground that respondent Bank has not followed the Regulation 41 in the present case.

8. In view of the aforesaid, the order dated 26.10.2010 (*Annexure-13*) and order dated 13.01.2012

(*Annexure-15*) are set aside and the writ petition is allowed.

9. The respondent-Bank is directed to pay all the consequential benefits to the petitioner from the date of removal from the service and extended all the benefits to the petitioner within a period of three months from the date of production/receipt of the copy of this order.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2024
Transmission Date	NA