

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10898 of 2012

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Dilip Kumar Prasad S/O Sri Balbhadra Prasad R/O Village- Dhamdaha, P.S.-
Dhamdaha, District- Purnea

... .. Petitioner/s

Versus

1. Kosi Kshetriya Gramin Bank, now named as Uttar Bihar Gramin Bank, through its Chairman, Head Office, Sharma Complex, Kalambagh Road, Muzaffarpur
2. The Chairman, Kosi Kshetriya Gramin Bank, Now Renamed As Uttar Bihar Gramin Bank, Head Office, Sharma Complex, Kalambagh Road, Muzaffarpur
3. The General Manager, Kosi Kshetriya Gramin Bank, Now Renamed As Uttar Bihar Gramin Bank, Head Office, Sharma Complex, Kalambagh Road, Muzaffarpur
4. The Disciplinary Authority-Cum-General Manager Kosi Kshetriya Gramin Bank, Now Renamed As Uttar Bihar Gramin Bank, Head Office, Sharma Complex, Kalambagh Road, Muzaffarpur
5. The Regional Manager Kosi Kshetriya Gramin Bank, Now Renamed As Uttar Bihar Gramin Bank, Regional Office, Jhanjharpur, District- Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arup Kumar Chongdar, Advocate Mr. Nazir Ansari, Advocate Ms. Eesha, Advocate
For the Bank	:	Mr. Prabhakar Jha, Advocate Mr. Amitesh Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 19-07-2024

Heard Mr. Arup Kumar Chongdar, along with Mr. Nazir Ansari and Ms. Eesha, learned counsels appearing on behalf of the petitioner and Mr. Prabhakar Jha, along with Mr. Amitesh Jha, learned counsels appearing on behalf of the respondents.

2. Petitioner has prayed for following relief(s) in paragraph no. 1 of the writ petition:



(i) For issuance of a writ of certiorari or any other appropriate writ, order or direction quashing order contained in Memo No.HO/DAD/04/11- 12/ No.713 dated 09.11.2011 issued under the signature of the Chairman of the Respondent Bank-cum-Appellate Authority, whereby and where under the Appeal dated 05.09.2011 preferred by the petitioner has been dismissed even without discussing the points raised by the petitioner in his appeal;

(ii) For issuance of a writ of certiorari or any other appropriate writ, order or direction quashing the order contained in Memo No.HO/DAD/04/11-12/ No.422 dated 27.7.2011 and communicated vide Memo No.423 dated 27.7.2011, issued under the signature of the General Manager of the Respondent Bank-cum-Disciplinary Authority, whereby and where under the Petitioner was inflicted with extreme penalty of Dismissal from Service in terms of Regulation 39 (2) (b) (vi) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010.

(iii) For issuance of a writ of mandamus or any other appropriate writ, order or direction commanding the Respondent Authorities to reinstate this petitioner in Bank's Service and to pay him all consequential benefits, such as arrear of salary etc. and further to treat him in continuous service till his date of normal superannuation on 31.7.2011;

(iv) For a declaration by this Hon'ble Court that the punishment inflicted upon the petitioner is shockingly disproportionate to the gravity of charges, particularly taking into account that admittedly there is no charge of financial misappropriation or loss to the Bank's fund;

3. The brief facts of the case are that the Petitioner was initially appointed as a Clerk-cum-Cashier in the Respondent Bank on 04.12.1980. The Petitioner was dismissed from service on 14.06.2000, however, later the Appellate Authority decided to re-appoint the Petitioner on the same post of Clerk-cum-Cashier on sympathetic grounds. The Petitioner,



thereafter, joined the Respondent Bank but was again terminated by the Chairman of the Respondent Bank. The same was subject matter of an earlier rounds of litigation, which finally culminated in an order of this Hon'ble Court dated 08.05.2002 passed in C.W.J.C. No. 3612 of 2010 [Annexure 4 to the writ application] whereby the termination order of the Petitioner was set aside with a liberty to the Respondent Bank to initiate a departmental proceeding against the Petitioner.

4. The disciplinary proceeding was initiated. Charge-sheet was issued and the inquiry thereafter was held, wherein the petitioner was found guilty of the charges. The disciplinary authority passed the order of punishment as contained in Memo No.422, dated 27.07.2011, which was upheld by the appellate authority vide order contained in Memo No.713, dated 09.11.2011, dismissing the appeal. The petitioner has challenged the order passed by the disciplinary authority, as well as, the appellate authority by amending the prayer during the pendency of the present writ petition to the effect that the order of dismissal dated 27.07.2011 was passed just before the date of retirement, i.e., 31.07.2011 and inadvertently the petitioner had not challenged the inquiry report dated 24.06.2011 (Annexure 10 to the main writ petition) on the



ground that out of 12 charges, except charges no.9 and 11, all are found proved. The disciplinary authority inflicted punishment of dismissal from service in terms of Regulation 39(2)(B)(vi) of the Uttar Bihar Gramin Bank (Officers and Employees) Service Regulation, 2010, hereinafter referred to as the “Service Regulation, 2010”. The petitioner thereafter preferred appeal before the Chairman of respondent Bank who did not interfere with the finding of the disciplinary authority and the appeal was dismissed. Aggrieved by the penalty order, the petitioner has preferred the present writ petition.

SUBMISSION

5. Learned counsel appearing on behalf of the petitioner submitted that in the present writ application, the petitioner is aggrieved by his dismissal from service on the basis of a disciplinary proceeding carried out by the Respondent Bank in terms of the liberty granted by a co-ordinate Bench of this Court. The disciplinary proceeding was initiated by issuance of a Memo of Charge dated 06.10.2010 containing twelve (12) allegations. It is the contention of the Petitioner that out of 12 charges, all were proved except charges no. 9 and 11. Petitioner has contended that the Memo of Charge itself is defective, in as much as, it did not contain definite and distinct charges as



required under Service Regulation, 2010. It is further submitted that none of the 12 charges contained relevant date, time, place or relevant circulars / instructions of the Respondent Bank alleged to be violated. Moreover, the Memo of Charge was not accompanied by list of documents to be relied upon by the Respondent Bank or the list of witnesses proposed to be examined during the proceeding. The Petitioner had raised these issues vide his reply dated 13.10.2010 to the Memo of Charge dated 06.10.2010 and had sent several reminders requesting the Respondent Bank to provide the relevant documents etc. He further submitted that the Disciplinary proceeding was abruptly concluded without giving reasonable opportunity to the Petitioner, as despite his request, the Petitioner was not allowed to produce certain defence exhibits and examine three witnesses. As per the Enquiry Report dated 24.06.2011, Charge Nos. 1 to 8, 10 and 12 were found to be proved. Learned counsel for the petitioner submitted that documents relied upon in the Enquiry Report was neither supplied to him nor were properly proved during the disciplinary proceeding by examining relevant witnesses. Also, the sole management witness was not allowed to be cross-examined by the Petitioner. Learned counsel had submitted a reply dated 07.07.2011



highlighting the aforesaid infirmities in the Disciplinary proceeding ignoring the said information. The Disciplinary Authority had passed the impugned order of dismissal dated 27.07.2011.

6. Learned counsel submitted that exhibits were produced and marked by the management during the enquiry proceeding, however, the same were not supplied to the Petitioner. Further, the Respondent Bank has also not denied the ground raised by the Petitioner that he was not allowed to cross examine the sole management witness. He submitted that the contention of the respondent that management witness had only tendered the exhibits and no examination-in-chief was recorded and, as such, there was no occasion for granting an opportunity to cross examine to the petitioner is not correct.

7. Learned counsel in above background submitted that the Respondent Bank has not been able to controvert the fact that no list of witnesses or documents to be relied by the management were given to the Petitioner, along with the memo of charge, which not only violates the Regulation of the Bank but also is violative of the principles of natural justice. In this regard, he submitted that it is also well settled principle of law that apart from the statutory duty, it is incumbent upon every



authority to give reasonable opportunity of hearing to affected parties before passing any order having civil consequences. The Apex Court in the case of ***Chairman State Bank of India and Anr. v. M.J. James*** reported in ***(2022) 2 SCC 201*** in paragraphs no. 28, 29 and 32 has held as under :-

“28. Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.”

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being



caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.”

8. The learned Counsel submitted that the said impugned order of dismissal dated 27.07.2011 is devoid of any cogent and valid reasons. Further, the impugned order of dismissal dated 27.07.2011 is based on extraneous materials and observations which were not part of the disciplinary proceeding. In this regard, the learned counsel has drawn the attention of this Court to an observation made in the impugned order of dismissal dated 27.07.2011 i.e. *“In view of above it is clear that the CSE is a man of doubtful integrity, dishonest, not trustworthy and his actions are detrimental to the interest of bank on whom no trust can be reposed while working in a financial institution like Bank.”* Learned counsel emphatically submitted that there was no charge framed in the Memo of Charge regarding integrity, dishonesty or trustworthiness of the



Petitioner and, as such, the Disciplinary Authority could not have proceeded to impose punishment on basis of such unproven charges which are alien to the entire disciplinary proceeding itself. It is further submitted that the statutory Appeal preferred by the Petitioner was also dismissed by a non-speaking order passed by the Appellate Authority vide impugned order dated 09.11.2011 in a mechanical and an arbitrary manner without adverting to the elaborate grounds raised by the Petitioner in his memo of appeal. Learned counsel submitted that order of disciplinary authority shows complete non-application of mind and the penalty of dismissal is wholly disproportionate to the charges proved against the petitioner.

9. *Per contra*, learned counsel appearing on behalf of the respondents submitted that while the petitioner was working as an Office Assistant at Regional Jhanjharpur, District-Madhubani, Charge sheet No. HO/DAW/03/10-11/No.218 dated 06.10.2010 was issued to him for his act of omission and commission which constitutes misconduct under Regulation 17 & 19 of Uttar Bihar Gramin Bank (Officers & Employees) Service Office Regulation, 2008 attracting penalty under Regulation 38 that altogether 12 charges was levelled against the petitioner.



10. He further submitted that Inquiring Authority and Presenting Officer were appointed *vide* letter No HO/DAW/04/11- 12/279 & 279A dated 19.10.2010 respectively and the departmental enquiry was commenced against petitioner which concluded on 27.05.2011 after holding 18 sittings of enquiry proceedings. The Management Representative/ Presenting Officer produced 19 (Nineteen) documents /papers as documentary prosecution evidences and 01 (One) Management Witness on 15.12.2010. Defence side produce 25 (Twenty) DEX as defence evidence and 03 (Three) witnesses during departmental enquiry in their defence. Further a written brief was submitted by the Presenting Officer and same was sent to the Petitioner with an advice to submit his written brief. However, petitioner did not submit any written brief. Subsequently, Inquiring Authority submitted his findings on 24.06.2011 by holding the charge as Charge No. 01, 02, 03, 04, 05, 06,07,08,10, & 12 as proved and charge no. 09 & 11 as not proved.

11. Learned counsel further submitted that the findings of Inquiring Authority were sent to the petitioner on 28.06.2011 and he was advised to go through the report thoroughly and submit his submission in respect of findings of



the Inquiring Authority. Petitioner submitted his submission with respect to findings of Inquiring Authority on 07.07.2011 in which Petitioner neither submitted any cogent reasons in his defence nor had brought any new fact in his support to disprove of the charges. After full consideration of the material facts, evidences and record including the written arguments filed on behalf of the Presenting Officer of the Bank, the Disciplinary Authority found that the procedure adopted by the Inquiring Authority for holding the enquiry is proper and justified and no instance of violation of principle of natural justice came to the notice of Disciplinary Authority passed the order of dismissal.

12. Learned counsel further submitted that petitioner was given enough opportunity to prove his innocence. The findings given by the Inquiring Authority shows that the Inquiring Authority has not only dealt with the evidences but has also taken into consideration the contentions raised by the Presenting Officer, as well as, by the Petitioner. Disciplinary Authority had carefully gone through the documents, inquiry proceedings, written brief of Presenting Officer, written brief of Defence/Petitioner, findings of Inquiring Authority and analyzed material available on the record with charge wise analysis. A consolidated punishment was awarded by the Disciplinary



Authority vide letter no. HO/DAD/04/11- 12/No.422 dated 27.07.2011 to the petitioner's dismissal, which shall ordinarily be a disqualification for future employment in terms of Regulation 39 (2) (b) (vi) of Uttar Bihar Gramin Bank (Officers Employees) Service Regulations, 2010. Learned counsel submitted that the petitioner, being aggrieved with the Disciplinary Authority order, preferred an Appeal before the Appellate Authority i.e. Chairman of the Bank. The Appellate Authority perused petitioner's appeal dated 05.09.2011 and examined the points/contentions raised in his appeal preferred against the Disciplinary Authority order dated 27.07.2011. The Appellate Authority on examination of the order thoroughly did not find scope to interfere with the findings of the Disciplinary Authority. The Appellate Authority concurred with the findings of the Disciplinary Authority in respect of charges proved, which commensurate with the gravity of the charges proved and as such, the Chairman of the Bank i.e. the Appellate Authority upheld the punishment awarded to the petitioner by the Disciplinary Authority. Bank's Representative produced 19 Management exhibits in his support. Management exhibits MEX-1 to MEX-19 were marked on all the exhibits by Inquiring Authority on the request of Bank's Representative,



which have been recorded in inquiry proceeding and all these documents were handed over to the Petitioner, which were also recorded in the inquiry proceeding register and the petitioner himself confirmed the minutes of the proceeding and receipt of exhibits, so handed over to the Petitioner. He further submitted that-

- In reference to Charge No.1 Management exhibits MEX- 1,2,3,7,8,9,10,13,18 & 19 were produced and marked.

- In reference to Charge No.2- Management exhibits MEX-1,4,5,6,8,9 & 13 were produced and marked.

- In reference to Charge No.3- Management exhibits MEX-1, 8 & 10 were produced and marked.

- In reference to Charge No.4- Management exhibits MEX-1,8,9,11,12,14,15 were produced and marked.

- In reference to Charge No.5- Management exhibits MEX-1, 8, 10, 16 & 17 were produced and marked.

- In reference to Charge. No.6- Management exhibits MEX-1, 16 & 17 were produced and marked.

- In reference to Charge No.7 Management exhibits MEX-1, 8, 10 & 17 were produced and marked.

- In reference to Charge No.8- Management exhibits MEX-1, 10 & 17 were produced and marked.



- In reference to Charge No.9- Management exhibits MEX-1 was produced and marked.

- In reference to Charge No. 10 & 11- Management exhibits MEX-1 85 10 produced and marked.

- In reference to Charge No.12-Management exhibits MEX-6, 8, 9, 10,11,12,13,14, 15, 16, 17 & 18 were produced and marked.

13. Learned counsel submitted that the petitioner had filed an appeal on 05.09.2011 against the order of penalty before the Appellate Authority i.e. the Chairman of the Bank. The Appellate Authority examined the each points/ contentions raised on behalf of the petitioner against the Disciplinary Authority order dated 20.07.2011, and after having examined records thoroughly, the Appellate Authority did not find scope to interfere with the findings of the Disciplinary Authority in respect of charges proved, and as such, the Chairman of the Bank i.e. the Appellate Authority upheld the punishment awarded to the petitioner by the Disciplinary Authority, vide the Order dated 09.11.2011.

14. Learned Counsel in above background submitted that the Petitioner was given adequate opportunity to prove his innocence in the disciplinary proceeding and the



Disciplinary Authority has proceeded to impose punishment of dismissal after considering the entire material, evidence and record of the departmental proceeding including written arguments filed on behalf of the presenting officer of the Bank as well as the Petitioner. He further submitted that even the Appellate Authority, after examining and considering the material on record, did not find any scope to interfere with the finding arrived at by the disciplinary authority and as such rejected the appeal.

15. He further submitted that it is on record that the petitioner's services were terminated twice and in the light of order dated 30.03.2010 of Hon'ble High Court, Patna passed in CWJC No. 3612 of 2010, he was reappointed on initial salary. In view of above facts, it is clear that petitioner being an employee of Bank and his act of omission and commission is doubtful and his action are detrimental to the interest of the Bank. The petitioner is working in financial institution like Bank. It is also evident that in spite of the fact that petitioner was also punished in the past, but he did not amend himself and continued to function/discharged his duties violating all laid down norms and banking rules, which was not expected from him. Learned counsel also submitted that the order passed by



this Hon'ble Court dated 30.03.2010 in CWJC No. 3612/2010 was fully complied with the Bank.

16. Heard the parties.

ANALYSIS

17. Before I proceed to deal with the facts of the present case and the relief sought for by the petitioner, I find that to analyze the conduct of the petitioner and the penalty order suffered by the petitioner in the background of the aforesaid facts, it is admitted that the petitioner was initially appointed as Clerk cum cashier in erstwhile Koshi Keshetriya Gramin Bank, which has since been merged with Uttar Bihar Gramin Bank. The petitioner had submitted his joining on 04.12.1980. After one year of probation, petitioner was confirmed as clerk-cum-cashier. Petitioner served the Bank for more than 20 years at different branches. The petitioner was terminated from service twice and in light of order dated 30.03.2010 passed in CWJC No.3612 of 2010, the petitioner was reappointed on initial salary. On 19.05.1992, the charge-sheet was issued to the petitioner and the petitioner was dismissed from service on 14.06.2000. The petitioner was re-appointed on initial salary on mercy ground on 02.09.2000. The probation period of the petitioner was extended by a decision



contained in letter dated 17.12.2001. Thereafter on the ground of failing to comply with the condition of the reappointment, a charge memo was issued for petitioner's misconduct vide letter dated 08.03.2002. The services of the petitioner having been found not satisfactory after the probation period, was terminated with effect from 18.03.2002 vide letter dated 08.05.2002 by giving one month advance salary. The petitioner against the order of termination, had preferred CWJC No.3612 of 2010. It is relevant to reproduce the main direction passed in CWJC No.3612 of 2010 vide order dated 30.03.2010 *inter alia* is as under:-

“The instructions of the Chairman contained in memo dated 20.9.2000, Annexure-4. Accordingly, I set aside the termination notice dated 08.05.2002, Annexure-2, and grant liberty to the Bank to initiate a departmental proceeding against the petitioner so as to give him an opportunity to defend himself on the allegations which are levelled against him under memo dated 08.03.2002, Annexure-1. In the event the Bank decides to initiate a proceeding against the petitioner he be allowed current salary until disposal of the departmental proceeding but the arrears of salary for the period between 08.05.2002 till the date of termination shall be subject to the result of the proceeding. In case the Bank does not initiate a proceeding against the petitioner; then the petitioner be paid the entire arrears of salary within one month.”

18. In compliance of order passed by this Court



dated 30.03.2010, vide memo No. HO/DAW/03/10-11/ No.281 dated 06.10.2010, charge-sheet was issued to the petitioner on the alleged charge of misconduct attracted penalty under clause 38 of the Regulation 2008. The inquiry authority and the presenting officer were appointed and a departmental inquiry was held against the petitioner which concluded on 27.05.2011 in 18 sittings of inquiry proceeding. The presiding officer produced 19 papers as evidence and one management witness. The petitioner produced 25 evidences and 3 witness during the departmental inquiry. The Presiding Officer had submitted written brief which was also handed over to the petitioner. The petitioner did not submit any brief on the basis of material on record. The inquiry authority submitted his finding on 24.06.2011, holding all the charges to be proved except charges no.9 and 11. The finding of the inquiry authority was sent to the petitioner on 28.06.2011 for making his submission. The petitioner submitted his explanation on 07.07.2011. The disciplinary authority accepted the inquiry report and inflicted him penalty of dismissal from service. The act of omission and commission are detrimental to the interest of Bank on whom no trust can be deposited. The claim of the petitioner is that charge memo was not accompanied by the list of documents to be



relied upon by the bank or list of witnesses proposed to be examined during the proceeding. I find feeble reference in his reply dated 13.10.2010 in this regard. Petitioner was given enough opportunity and it cannot be said that the disciplinary proceeding was abruptly concluded. The petitioner had examined three witnesses and the denial of the petitioner that inquiry report was not supplied to him cannot be accepted considering the fact that the same was sent to him vide order dated 28.06.2011 and he had also submitted his reply on 07.07.2011. Petitioner cannot be permitted to “*abrogate and reabrogate*”. *The finding of the inquiry officer to the extent “that in view of above it is clear that CSE is a man of doubtful integrity, dishonest, not trustworthy and his actions are detrimental to the interest of bank on whom no trust can be reposed while working in the financial institution like Bank.”*

19. It is evident from the aforesaid fact that in spite of the fact that the petitioner being the employee of a Bank was appointed twice for the action of omission and commission and in any manner, it cannot be said that it is not doubtful as his actions are detrimental to the interest of the Bank. The petitioner was punished in past but he did not amend himself and continue to violate the norms laid down in banking rules which is not



accepted from a bank employee.

20. The Hon'ble Supreme Court in the case of **Regional Manager, U.P.SRTC, Vs. Hoti Lal**, reported in **2003(3) SCC 605** has observed at page 614 SCC as under:

"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 trust- worthiness 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 learned Single Judge upholding the order of dismissal."

21. Relying on the said proposition of law, in the case of **Bank of India & Ors. Vs. T Jogram**, reported in **2007 (7) SCC 236**, the Apex Court in paragraph no.15 has held as under:-

"15 By now it is well-settled principle of law that judicial review is not against the decision. It is against the decision making process. In the instant case, there are no allegations of procedural irregularities/illegality and also there is no allegation of violation of principles of natural justice. Counsel for the respondent tried to sustain the allegation of malafide. He tried to assert that the respondent filed a case against the Chief Manager of Secunderabad



Branch in 1996 and the enquiry initiated against the respondent is the fall out of malafide. We are unable to accept the bald allegations. The allegation of malafide was not substantiated. It is well settled law that the allegation of malafide cannot be based on surmises and conjectures. It should be based on factual matrix. Counsel also tried to assert the violation of principles of natural justice on the ground that the documents required by the respondent were not supplied to him. From the averment it is seen that the documents, which were sought to be required by the respondent, were all those bills submitted by the respondent himself before the authority. In these circumstances, no prejudice whatsoever was caused to the respondent.”

22. This Hon'ble Court in L.P.A. No. 1555 of 2015 arising out of ***CWJC No. 2573 of 2015 (Shibatosh Dutta vs. The Uttar Bihar Gramin Bank & Ors.)*** in which also, facts of the case are similar to the present writ petition, upon appreciation of facts and the allegation made against the appellant of the said case, relying on the law laid down by the Apex Court in the cases of ***Regional Manager, U.P. SRTC, Etawah (Supra), Disciplinary Authority- cum-Regional Manager v. Nikunja Bihari Patnaik***, reported in ***(1996) 6 SCC 69***, ***Ganesh Santa Ram Sirur vs. State Bank of India and Anr.***, reported in ***(2005)1 SCC 13***, ***Canara Bank Vs. V.K. Awasthy*** reported in ***(2005)6 SCC 321***, ***State Bank of India & Anr. vs.***



Bela Bagchi and Others, reported in (2005)7 SCC 435, *Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain*, reported in (2005)10 SCC 84, *State Bank of India & ors. vs. Ramesh Dinkar Punde*, reported in (2006)7 SCC 212, *State Bank of India & ors. vs. S.N.Goyal*, reported in (2008)8 SCC 92, *General Manager (P), Punjab & Sind Bank and Others vs. Daya Singh*, reported in (2010)11 SCC 233 and *T.N.C.S. Corporation Ltd. vs. K. Meerabai*, reported in (2006)2 SCC 235, has not interfered with the order of punishment by upholding the judgment passed by the learned Single Judge in CWJC No. 2573 of 2015.

23. In view of the aforesaid discussion, the dismissal order dated 27.07.2011 cannot be faulted with.

ON QUANTUM OF PUNISHMENT

24. The petitioner has made a prayer that punishment inflicted upon him is disproportionate to the gravity of the charges, particularly taking into account the order of punishment of dismissal from service in terms of Regulation 39(2)(B)(6) of the Service Regulation 2010 in view of the charges levelled against the petitioner and his past conduct. So far as the contention of the petitioner that the impugned order passed by the disciplinary authority dated 27.07.2011 has been



passed without application of mind and the penalty of dismissal is disproportionate to the charges proved against the petitioner is concerned, I find that the petitioner has acted beyond his own authority and is by itself a breach of discipline and constitutes misconduct and no further proof of loss is necessary and the punishment imposed on the petitioner cannot be said to be in excess or disproportionate to the nature of charges.

25. The scope of interference with the punishment awarded in disciplinary proceedings has been dealt with by the Supreme Court in several cases. A reference to few of the cases will suffice. In **B. C. Chaturvedi V. Union of India and others (1995) 6 SCC 749**, a three Judge Bench held as follows:

“18. 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. If 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.”

26. Similar view was taken in **Om Kumar V. Union of India** reported in **(2001) 2 SCC 386**, wherein the Court



observed as follows:

“71. 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.”

27. Similar is also the view taken in **Oil Corpn. Ltd. V. Ashok Kumar Arora (1997) 3 SCC 72** and **Regional Manager, U.P.SRTC, Etawah and others V. Hoti Lal and another (2003) 3 SCC 605** that the Court will not interfere unless the punishment is wholly disproportionate. In **Regional Manager, U.P.SRTC, Etawah and others V. Hoti Lal and another (supra)**, the Supreme Court held as under:

“10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment



was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 (NIRC)]. A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. 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.”

28. In the present case the learned counsel for the petitioner has sought to interfere with the order of dismissal solely on the ground that no loss had been caused to the bank can hardly be a consideration for reducing the quantum of punishment as has been explained by the Supreme Court in the case of **Disciplinary Authority-cum-Regional Manager and others V. Nikunja Bihari Patnaik (1996) 9 SCC 69**. The



relevant paragraph of the said case is as under:

“..... In the case of a bank -- for that matter, in the case of any other organisation -- every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, 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. As mentioned hereinbefore, 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 Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals 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. It is wrong to characterise them as errors of judgment.”

29. To the similar effect are the observations by the Supreme Court in the case of **State Bank of India and others v. T. J. Paul (1999) 4 SCC 759**, which are reproduced hereunder:



“14. On the other hand, learned Senior Counsel for the respondent, Shri P.P. Rao contended that the enquiry officer did not give any finding of serious financial loss.

15. Taking up the definition of —gross misconduct in para 22(iv), it is obvious that clause (h) does not apply because the charge is not one of insubordination or disobedience of specific orders of any superior officer. Coming to clause (l) of para 22(iv), the doing of any act prejudicial to the interests of the Bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss is gross misconduct. In other words likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. The enquiry officer's finding of —gross misconduct on the ground of not obtaining adequate security is, therefore, correct and cannot be said to be based on no evidence as held by the High Court. This can be contrasted with para 22(vi)(c) under minor misconduct which deals with —neglect of work and negligence in performing of duties. In our view, the contention of the learned Senior Counsel for the appellants, Shri T.R. Andhyarujina is, therefore, entitled to be accepted.

16. The contention of the learned Senior Counsel for the respondent ignores the fact that —gross negligence or negligence likely to involve the Bank in serious loss would come under major misconduct within para 22(iv) (l). As stated above, even assuming that there is no gross negligence, simple negligence will come under major misconduct if accompanied by —likelihood of serious loss and this is clear from para 22(iv)(l).”

CONCLUSION

30. In the facts of the present case, I find that disciplinary proceeding has been initiated against the petitioner under the relevant rules. From the charges which constitute misconduct, I find that the inquiries were based on the evidence and petitioner was given due opportunity at every stage of



departmental proceeding without there being any violation of rules of natural justice. The disciplinary authority arrived at a conclusion that the petitioner is guilty of charge and I don't find to interfere with the punishment order or quantum of penalty in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India and review the evidence and arrive at an independent finding on the evidence which cannot be re-appreciated. The finding of the Inquiry Officer is substantiated by the material on record and the allegation levelled against the petitioner constitutes the misconduct. I am of the considered view that the order of disciplinary authority dated 27.07.2011 and affirmed by the appellate authority dated 09.11.2011 cannot be faulted for the aforesaid reason as indicated hereinabvoe.

31. The writ petition is accordingly dismissed. There shall be no order as to cost.

32. Interlocutory application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-
Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	30.04.2024
Uploading Date	19.07.2024
Transmission Date	NA

