

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.283 of 2024

In

Civil Writ Jurisdiction Case No.1323 of 2020

Rakesh Roshan Gupta Son of Raghunath Prasad Gupta, Resident of Flat No. 305, C/o- Satyam Apartment, Montessori School Lane, Boring Road, P.S.- S.K. Puri, District- Patna

... .. Appellant/s

Versus

1. The Chairman-cum- Managing Director, State Bank of India Nariman Point, Mumbai.
2. The Appellate Authority-cum-Chief General Manager, State Bank of India, Local Head Office (LHO), West Gandhi Maidan, Patna.
3. The Appointing Authority -cum- General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna.
4. The Deputy General Manager (Business and Operation), State Bank of India, Zonal Office, Kala Bhawan Road, Patna.
5. The Assistant General Manager (Domestic Enquiry), State Bank of India, Local Head Office, Patna.
6. The Chief Manager, State Bank of India, Main Branch, Siwan.
7. The Manager (Vigilance), State Bank of India, Local Head Office, Patna.
8. Mr. Kumar Gaurav, Son of Ravindra Prasad, Resident of Mohalla- Jai Prakash Nagar, Patna College Chowk, P.S.and District- Patna, Erstwhile Branch Manager, Agwanpur Branch, Saharsa, at present posted as Manager, Personal Banking Branch, Near Dr. I.D. Singh Clinic, New Colony, Naya Bazar, Saharsa, Pin Code- 852201, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate Mr. Sanket, Advocate Mr. Navin Kumar Singh, Advocate Mr. Amresh Kumar, Advocate
For the Respondent/s	:	Mr. Sanjiv Kumar, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 04-03-2025

1. The appellant has filed the instant appeal against



the judgment dated 23.2.2024 passed in CWJC no.1323 of 2020, whereby the learned Single Judge was pleased to dismiss the writ application. The appellant had filed the writ application praying for quashing the order of punishment dated 7.6.2019, whereby the punishment of reduction to the post of Award Staff fixing the basic pay as Rs.21,240/- per month was imposed on the appellant with a further order that the period of suspension would be treated not on-duty. The appellant had also prayed for quashing the appellate order dated 20.11.2019.

2. The relevant facts in brief are that while the appellant was posted as the Assistant Branch Manager in the Munger Branch of the State Bank of India, an F.I.R. being Saharsa Sadar P.S. Case no.341 of 2013 was registered against him on 9.7.2013 for offence under sections 406 and 420 of the Indian Penal Code. On investigation final form was submitted and the same was accepted by the learned Court below on 24.2.2016. With the acceptance of the final form, the criminal case stood closed. The petitioner was proceeded against in a disciplinary proceeding in terms of Rule 68(1) of the **State Bank of India Officers' Service Rules, 1992** ('the Rules of 1992' in short) on the following charges :-

“(i) On 15.03.2013, you unauthorisedly posted and passed a voucher for



Rs.50,000/- for debit to S.B. Account no. 11859364685 of Shri Parmeshwari Thakur and credited the proceeds to your own S.B. Account no. 10789017933, maintained at Munger Branch. Later on, you have restored the amount of Rs.50,000/- to the above mentioned S.B. Account of Shri Parmeshwari Thakur on 25.3.2013 from your O.D. Account no. 10788905146 maintained at Munger Branch.

(ii) On 13.03.2013, you have opened a S.B. Account no. 32880557595 in your own name under the segment “Personal Public-Others” and under a new CIF no. 86653881021, without obtaining permission from competent authority. In this account, you have concealed your SBI identity, local address and PAN no. against extant instructions of the Bank.

(iii) You were on unauthorised absence from duty from 10.05.2013 to 05.06.2013.”

3. The departmental proceeding started and the Enquiry Officer submitted an enquiry report dated 6.5.2014, the summary of the report being that the allegation no. 1 was not proved while allegation nos. 2 and 3 were found to be proved. The charges having been partly proved, the disciplinary authority along with the letter dated 12.5.2014 served a copy of the enquiry report on the appellant observing that they did not



agree with the findings of the enquiring authority with respect to the allegation no.1. Observing that the disciplinary authority/appointing authority will take the final decision after examining the enquiry report, the appellant was given liberty to file his representation within a period seven days. The appellant submitted his reply on which the appointing authority by order contained in letter dated 6.2.2015 imposed the penalty of dismissal on the appellant.

4. The order of dismissal was challenged by the appellant in this Court in CWJC no. 4163 of 2015 which was withdrawn by order dated 19.3.2015. A review application being Civil Review no. 106 of 2015 preferred by the State Bank of India against the order dated 19.3.2015 passed in the writ application was dismissed imposing a cost of Rs. 25,000/- on the Bank.

5. The appellant preferred a statutory appeal which was rejected by the appellate authority on 18.9.2015. The appellant challenged the order of the appellate authority in CWJC no. 19743 of 2015 which was allowed by order dated 23.4.2018. The learned Single Judge was pleased to set aside the order of both the disciplinary authority as also the appellate authority and further directed for reinstatement of the appellant



with all consequential benefits, however, observing that it would be open for the authorities to proceed in the matter expeditiously from the stage of the second show-cause notice.

6. On the appellant having filed a representation dated 4.5.2018, the Bank ordered for reinstatement of the appellant on 17.7.2018. A second show-cause notice was served by the Bank on the appellant to which he filed his reply. The appellant received a communication dated 21.2.2019 from the appointing authority mentioning therein the reason for the disagreement with the findings of the enquiring authority and the disciplinary authority in respect of allegation no.1 contained in the charge-sheet. The appellant submitted his reply on 12.3.2019. The appellant thereafter received a letter dated 1.6.2019 from the appointing authority intimating him that after having considered the records of the enquiry, it was proposed to impose the major penalty of removal from the Bank on the appellant and as such he was given liberty to appear in the office of the appointing authority and to make submissions as to why the proposed penalty be not imposed on him. The appellant filed his reply on 6.6.2019 whereafter, the respondent authorities came out with an order contained in letter dated 7.6.2019 imposing the penalty of "Reduction to the post of Award Staff and fixing



of basic pay at Rs.21,240/- p.m.” in terms of Rule 67(g) and 67(f) of the Rules of 1992 and further that the period of suspension was to be treated as not on duty. The appeal preferred by the appellant was rejected by the appellate authority by order dated 21.11.2019.

7. The appellant challenged both the order of punishment dated 7.6.2019 passed by the appointing authority as also the order rejecting the appeal dated 20.11.2019 by the appellate authority by filing CWJC no. 1323 of 2020. The same having been dismissed by the learned Single Judge, the instant appeal has been preferred.

8. It was submitted by Sri Mrigank Mauli, learned Senior Counsel appearing for the appellant that the learned Single Judge has not appreciated the allegations and the explanation furnished by the appellant. As per the enquiry report, the allegation no. 1 which related to the appellant's unauthorisedly passing a voucher for Rs.50,000/- for debit of the amount of Shri Parmeshwari Thakur on 15.3.2013 and crediting the same in his account on 25.3.2013 is concerned, the same was not proved. The orders of appointing authority as also the appellate authority were non speaking and they had not considered the defence of the appellant nor the statement of



Parmeshwari Thakur made before the Judicial Magistrate. It was submitted that no witness had been produced by the Department for proving the charges against the appellant and the same was in teeth of the judgments of the Hon'ble Supreme Court. Learned Senior counsel in support of his contentions relied on the judgments of the Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank [(2009) 2 SCC 570]**, **Deputy General Manager (Appellate Authority) & Ors. vs. Ajai Kumar Srivastava [(2021) 2 SCC 612]** and **Satyendra Singh vs. State of Uttar Pradesh & Anr. [2024 SCC Online SC 3325]**.

9. Learned Senior counsel appearing for the appellant further submitted that pursuant to order dated 23.4.2018 passed in CWJC no.19743 of 2015, whereby having quashed the orders impugned, while directing for reinstatement of the appellant with all consequential benefits, liberty was granted to the authorities to proceed in the matter from the stage of second show-cause. Though a notice was given by the disciplinary authority, the matter was referred to the appointing authority who by letter dated 21.2.2019 issued a show-cause notice to the appellant differing with the enquiry report and on receipt of the appellant's reply proceeded to pass the order of punishment on



7.6.2019 which was against Rule 68.3(iii) of the Rules of 1992. It was submitted that the order of the learned Single Judge is not sustainable, the same be set aside and the instant appeal be allowed.

10. In response, Sri Sanjiv Kumar, learned Counsel appearing for the State Bank of India submitted that in the enquiry conducted, charge no.1 of the three charges was not proved while the other charges were proved. The disciplinary/appointing authority differing with the findings of the Enquiry Officer held charge no.1 also to have been proved and imposed the punishment of dismissal on the appellant. The appeal preferred by the appellant was also rejected. It was submitted by learned counsel for the Bank that though the order of punishment was set aside in the writ application (CWJC no. 19743 of 2015) preferred by the appellant, however, liberty was granted to the disciplinary authority to proceed from the stage of second show-cause notice. Accordingly, the appellant was served with a second show-cause notice dated 15.9.2018 to which the appellant filed his reply. Thereafter, the appointing authority served the appellant with another notice contained in letter dated 1.6.2019, stating therein that it was proposed to impose major penalty of 'removal from the Bank' and thus the



appellant was called upon to appear for personal hearing and to make submissions as to why the proposed penalty be not imposed. The appellant filed his reply and the appointing authority after considering the same passed a speaking order imposing the penalty of 'reduction to the post of Award Staff and fixing of basic pay at Rs. 21,240 p.m.' and further that the period of suspension will not be treated to be on-duty. The appellant preferred an appeal against the said order of punishment which was rejected on 20.11.2019.

11. Learned counsel for the Bank further submitted that the appointing authority issued reasons for differing with the findings of the inquiring authority with respect to the charge no. 1. The power of judicial review on the Constitutional Courts is not that of an appellate authority, but is confined to the decision making process. The Court is not expected to reappreciate the evidence or to go into adequacy thereof. Further submission made was to the effect that acquittal of the charged officer in the criminal proceeding did not preclude a departmental enquiry on the charges of misconduct as object of both the proceedings were different. Besides the appellant having opposed calling of the customer as prosecution witness, the Hon'ble Supreme Court had held that the customer of the



Bank need not be involved in a domestic enquiry. It was submitted that the question was not as to whether there was mandate of the customer or not, but the question was that the appellant had no authority to use double entry voucher while withdrawing the money of a customer. It was finally submitted that if the disciplinary authority accepts the findings of the inquiring authority, no detailed reason is required to be recorded.

12. In support of his contentions, learned counsel for the Bank relied upon the judgments of the Hon'ble Supreme Court in the case of **Karnataka Power Transmission Corporation Limited vs. C. Nagaraju & Anr. [(2019) 10 SCC 367]**, **State of Karnataka & Anr. vs. Umesh [(2022) 6 SCC 563]**, **State Bank of India vs. Tarun Kumar Banerjee & Ors. [(2000) 8 SCC 12]**, **General Manager (P), Punjab & Sind Bank & Ors. vs. Daya Singh [(2010) 11 SCC 233]**, **State Bank of India & Ors. vs. Narendra Kumar Pandey [(2013) 2 SCC 740]**, **State Bank of India & Ors. vs. Ramesh Dinkar Punde [(2006) 7 SCC 212]**, **Suresh Pathrella vs. Oriental Bank of Commerce [(2006) 10 SCC 572]**, **Boloram Bordoloi vs. Lakhimi Gaolia Bank & Ors. [(2021) 3 SCC 806]** and **S.N. Mukherjee vs. Union of India [(1990) 4 SCC 594]**.



13. Heard learned Senior counsel for the appellant and learned counsel for the respondent-State Bank of India.

14. The appellant who was posted as the Assistant Branch Manager in the State Bank of India was proceeded against departmentally under the Rules of 1992 on three charges as stated herein above. The charges were that on 15.3.2013, he had unauthorisedly posted and passed a voucher of Rs. 50,000/- for debit of the savings bank account of Shri Parmeshwari Thakur, credited the proceeds to his own account and later restored the amount to the account of Shri Parmeshwari Thakur. The second charge was that on 13.3.2013, he opened a savings bank account in his name under the segment “Personal Public- Others” without obtaining permission from the competent authority and concealing his SBI identity. The third charge was that he was unauthorisedly absent from duty from 10.5.2013 to 5.6.2013.

15. The enquiry report submitted on 6.5.2014 found charge no.1 to be not proved while charge nos. 2 and 3 were found to be proved. It may be mentioned here itself that perusal of the enquiry report (Annexure-12) shows that the Presenting Officer presented seven prosecution documents and named one witness. The sole witness named was also not produced before



the Enquiry Officer.

16. The defence of the appellant with respect to charge no. 1 was that from DEx-5 it was clear that savings bank account of Shri Parmeshwari Thakur had been debited on the basis of the instructions given by him. The enquiring authority taking into consideration the double entry vouchers, with respect to the transactions both of which contained the debit confirmation of the account holder came to the conclusion that they could not be considered as unauthorised transactions and thus the said charge was not proved.

17. So far as charge no. 2 is concerned with respect to opening of a savings bank account by the appellant in the segment "Personal Public-Others" without obtaining permission from the competent authority and concealing his SBI identity is concerned, it was the case of the appellant that there was no circular or rule for taking prior permission from the competent authority and he had not concealed his identity of being an SBI employee in opening of the account. The said account was closed without any transaction. However, the enquiring authority taking into consideration PEx-3 which was the account opening form, without the said document having been exhibited or proved proceeded to place reliance on the same and



concluded that the allegation was found to be proved.

18. In case of charge no.3, it was the defence of the appellant that leave had been duly sanctioned to him from 1.5.2013 to 9.5.2013 for the marriage of his sister, extension of which was sought further till 25.5.2013. The same was followed by the illness of his aunt on 25.5.2013 and leading to her death on 30.5.2013 for which further extension was sought, however the same was rejected. Soon after communication of the rejection, he joined. The Enquiry Officer proceeded to hold the charge to be proved on the basis of the prayer for extension of leave having been rejected and placing reliance on the attendance register (PEx-6), which was once again neither exhibited nor proved, no witness having been examined.

19. At this stage, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi** (*supra*), wherein, the Hon'ble Supreme Court had taken note of the fact that no witness was examined to prove the documents and the management witnesses had merely tendered the documents without proving the contents thereof and thus, the same cannot be treated as evidence. It was held as follows :-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function.



The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

(emphasis supplied)

20. Following the judgment in the case of Roop Singh Negi (*supra*), the Hon'ble Supreme Court in the case of **Satyendra Singh** (*supra*) held that even in an *ex parte* enquiry it is *sine quo non* to record the evidence of the witnesses for proving the charges. It was held as follows :-

“17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi and and Nirmala J. Jhala, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty.



were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges”
(emphasis supplied)

21. It may be observed here that so far as the criminal case is concerned, on investigation having been conducted in connection with the F.I.R. registered, final form was submitted in the learned Court below on 30.9.2013 and having gone through the contents of the material that had transpired in course of investigation, the learned Additional Chief Judicial Magistrate-IV, Saharsa was pleased to accept the same by his order dated 25.2.2016.

22. Learned Senior Counsel appearing for the appellant has further submitted that notice contained in letter dated 21.2.2019 was issued to the appellant by the appointing authority differing with the findings of the Enquiry Officer with respect to charge no.1. On a detailed reply having been filed by the appellant, the appointing authority proceeded to pass the order of punishment dated 7.6.2019. Both the letter dated 21.2.2019 and the order dated 7.6.2019 are contended to be in violation of Rule 68.3(iii) of the Rules of 1992, relevant part of which is quoted herein below :-

“68. 3 (i)
(ii) The Disciplinary Authority shall, if it



disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its record is sufficient for the purpose.

(iii) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in rule 67 should be imposed on the officer, it shall, notwithstanding anything contained in sub-rule (4), make an order imposing such penalty.

Provided that where the Disciplinary Authority is of the opinion that the penalty to be imposed is any of the penalties specified in clauses (e), (f), (g), (h), (i) & (j) of rule 67 and if it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority its recommendations regarding the penalty that may be imposed. Records of the enquiry specified in Clause (xxi) (b) of sub rule (2), shall also be submitted to the Appointing Authority in respect of penalties to be imposed under clauses (f), (g), (h), (i) & (j) of rule 67. The Appointing Authority shall make an order imposing such penalty as it consider in its opinion appropriate.”

23. The Rules thus clearly stipulate that in case the disciplinary authority disagrees with the findings of the enquiring authority on any article of charge, it is to record its reason for such disagreement and proceed to impose penalty. Only when the disciplinary authority is of the opinion that the



penalty to be imposed is any of the penalties specified in clauses (e) to (j) of Rule 67 and it is lower in rank to the appointing authority in respect of the category of officers to which the officer belongs that it shall submit its recommendation regarding the penalty that may be imposed to the appointing authority and the appointing authority shall make an order imposing such penalty as it considers in its opinion appropriate. In view of the clear stipulation in Rule 68.3, quoted above, it was for the disciplinary authority to record its opinion with respect to its disagreement with the findings of the enquiring authority and not refer the matter to the appointing authority as has been done in the instant case. The Court finds substance in the submissions made on behalf of the appellant.

24. Coming to the judgments relied upon by learned counsel for the respondent-Bank, the judgments in the case of **Karnataka Power Transmission Corporation Limited** (*supra*) and **State of Karnataka & Anr. vs. Umesh** (*supra*) have been cited in support of the contention that rules of evidence which are applied to criminal cases are distinct from that governing disciplinary enquiry and thus acquittal of the charged officer in the criminal proceeding does not preclude a departmental inquiry on charges of misconduct as object of both



the proceedings are different. There can be no dispute with respect to the proposition of law and as such the appellant was proceeded against in the departmental proceeding.

25. The next judgment in the case of **State Bank of India vs. Tarun Kumar Banerjee** (*supra*) has been relied upon to submit that a customer of the Bank need not be involved in a domestic enquiry as the same would not be conducive to banker-customer relationship and would not be in the interest of the Bank. It may be observed here that in the instant case, though the customer namely Shri Parmeshwari Thakur may not have been involved in the proceedings conducted against the appellant, however, this would not absolve the Bank of proving the charges levelled against the appellant by leading oral evidence and proving the documents/exhibits being relied upon by the prosecution as also proving the contents thereof.

26. Two judgments have been relied upon by learned counsel for the Bank to submit that it is not necessary that in every case there should be oral evidence. So far as the case of **General Manager (P), Punjab & Sind Bank** (*supra*) is concerned, the facts of the case were distinct insofar as in the said case during enquiry the relevant documents in support of the charges were not only exhibited, but were proved by the



cashier of the Bank one Mr. K.P. Singh in his deposition during the departmental enquiry. In the said case the relevant documents including the ledger entries were produced through the witnesses concerned and thus the Hon'ble Supreme Court held that in the circumstances, the conclusions arrived at by the Enquiry Officer could not have been held as being without any evidence in support. So far as the second judgment in the case of **State Bank of India vs. Narendra Kumar Pandey** (*supra*) is concerned, the facts of the case were different from the present case. The enquiring authority therein permitted the charged officer to inspect the record, however, the charged officer walked out of the enquiry and was later contending that the enquiring authority should not have relied upon the documents which were not made available or disclosed to him. The Hon'ble Supreme Court held that even in an *ex parte* enquiry, some evidence is necessary to establish the charges. Further, when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges. It was further held that in some cases prove may only be documentary and in come cases oral and the requirement of proof would depend upon the facts and circumstances of each case.



27. Learned counsel for the Bank has further relied on the judgments are in the case of **State Bank of India vs. Ramesh Dinkar Punde** (*supra*) and **Suresh Pathrella vs. Oriental Bank of Commerce** (*supra*) to submit that good conduct and discipline are inseparable from the functioning of every employee of the Bank. There can never be two views of the matter.

28. Learned counsel for the Bank has further relied on the judgment in the case of **Boloram Bordoloi** (*supra*) to submit that in case the disciplinary enquiry accepts the finding of the enquiring authority, no detailed reason is required to be recorded in the order imposing punishment. Further reliance has been placed on the judgment in the case of **S.N. Mukherjee** (*supra*) to submit that if the appellate or revisional authority affirms the order of punishment, they need not give separate reasons. Accepting the same, what is also required is that all the points raised by the applicant be dealt with by the appellate/revisional authority.

29. The judgments relied upon by learned counsel for the appellant, in the opinion of the Court are of no assistance to the appellant in the facts of the instant case. As held in the judgments referred to herein above, though strict rules of



evidence do not apply to a departmental proceeding, nevertheless, the charges levelled are required to be proved by leading evidence. Depending on the facts of the case, the prosecution is required to prove the charges levelled with the support of documentary evidence together with oral evidence being led to mark the document as an exhibit, to prove the same as also the contents thereof.

30. So far as the facts of the instant case are concerned, a perusal of the enquiry report would show that besides not finding that charge no.1 was not proved, so far as charge nos. 2 and 3 are concerned, the enquiring authority has proceeded to accept the documents which found mention in the charge-sheet and proceeded to give the finding that the same were proved. In view of the law laid down by the Hon'ble Supreme Court in the case of **Roop Singh Negi** (*supra*) followed in the case of **Satyendra Singh** (*supra*), no oral evidence having been led, it was a case of no evidence and thus, the consequential order of punishment cannot be sustained.

31. The appellate authority also erred in not considering the points raised by the appellant in the appeal filed and dealt with herein above and having rejected the appeal.

32. For the reasons stated herein above, in the opinion



of the Court, the order of punishment as also the order of the appellate authority cannot be sustained and are both hereby set aside.

33. In view of the facts and circumstances of the case, the order of the learned Single Judge also cannot be sustained and is set aside.

34. The appeal is allowed with all consequential benefits with effect from the date of his first dismissal (ie 6.2.2015) which shall be paid to the appellant within a period of three months from the date of receipt of a copy of this order.

(Partha Sarthy, J)

Ashutosh Kumar, ACJ: I agree.

(Ashutosh Kumar, ACJ)

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AFR/NAFR	
CAV DATE	29.01.2025
Uploading Date	04.03.2025
Transmission Date	

