IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11961 of 2010

==========

Pulak Chandra Das, S/O Late Kanti Chandra Das, R/O Mohalla- High School Para, Near East Bang Bhawan, P.S.Katihar, District-Katihar

... ... Petitioner.

Versus

1. The State Bank of India through its Chief General Manager, 7th Floor, Local Head Office, State Bank of India, West Gandhi Maidan, Patna.
2. The Deputy General Manager O and C (NW-I)-cum-Appellate Authority Disciplinary Proceeding Cell, State Bank of India, Administrative Building, J.C. Road, Patna.
3. The Assistant General Manager (Administration)-cum-Disciplinary Authority Disciplinary Proceeding Cell, State Bank of India, Administrative Office, Purnia.
4. The Assistant General Manager Region III, State Bank of India Zonal Office, Purnia.
5. The Deputy Manager-cum-Enquiry Officer, State Bank of India Administrative Office, Purnia Region III, Purnia.
6. The Deputy Manager-cum-Presenting Officer, State Bank of India Region III, Administrative Office, Purnia.
7. The Branch Manager, State Bank of India, Forbesganj Branch, District-Araria

... ... Respondents.

==========

Appearance :

For the Petitioner	:	Mr. Aditya Narain Singh, Advocate. Mr. Kundan Kumar Sinha, Advocate.
For the Respondent-SBI	:	Mr. Ashok Chaudhary, Senior Advocate. Mr. Anjani Kumar Mishra, Advocate. Mr. Akshansh Ankit, Advocate.

==========

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 14-02-2025

In the instant writ petition, petitioner has prayed for the following relief(s):

> "For issuance of a writ in the nature of certiorari for quashing of the order dated 14.11.2009, passed by the Assistant General Manager (Admn.)-cum-Disciplinary

Authority, Disciplinary Proceeding Cell, State Bank of India, Administrative Office, Purnia, whereby and whereunder, the Disciplinary Authority has imposed a penalty upon the petitioner of "Removal from Bank's Service with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment under the Clause 6(b) of the Memorandum of Settlement dated 10.04.2002. The period of suspension will be treated as such i.e. not on duty".

As well as for quashing of the order passed by the Deputy General Manager O & C (NW-I) (Appellate Authority) State Bank of India Administrative Building J.C. Road, Patna dated 19 Feb. 2010 confirming the penalty of removal of the petitioner from the Bank services by the Disciplinary Authority.

Both the order one being passed by the Disciplinary Authority on 14.11.2009 and other by the Appellate Authority dated 19 Feb. 2010 supported by the speaking order of the respective dates."

2. The petitioner while working as a Senior Assistant

in the Respondents-Bank, he was subjected to disciplinary proceedings. Alleged to be preliminary charges were framed on 13.03.2007. Petitioner submitted his reply on 17.04.2007. Thereafter, alleged stated to be final charges have been framed on 22.08.2007. Petitioner had submitted his reply on 05.09.2007. Disciplinary Authority not satisfied with the petitioner's explanation proceeded to appoint inquiring officer. The inquiring officer submitted his report on 26.12.2008, holding that the charges levelled against the petitioner were proved. Resultantly, second show cause notice dated 05.11.2009 was issued by the Disciplinary Authority. Thereafter, Disciplinary Authority proceeded to impose penalty of removal from service on 14.11.2009. Feeling aggrieved by the order of punishment, petitioner preferred an appeal before the Appellate Authority on 26.12.2009 in which petitioner suffered an order on 19.02.2010. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that petitioner is governed by the Bipartite Settlement dated 10.04.2002 in respect of disciplinary action against workmen Staff and Procedure. It is submitted that along with the charge-memo, list of documents and list of witnesses and statement of

imputation was not provided. For the first time, the inquiring officer taken note of certain list of documents. None of the witnesses have been examined like author of the documents, which were taken note of for the purpose of proving the charges. The same has not been appreciated by the Disciplinary and Appellate Authority. Removal punishment is a major penalty. In not following the Bipartite Settlement dated 10.04.2002 violates the petitioner's right and so also it is in violation of principles of natural justice. Non-examination of witnesses in support of alleged charges are sufficient to set aside the impugned orders of removal and its affirmation by the Appellate Authority in the light of the Hon'ble Supreme Court decision in the case of **Roop Singh Negi Versus Punjab National Bank and others**, reported in **(2009) 2 Supreme Court Cases 570** read with principles laid down in the case of **Union of India and Others Versus P. Gunasekaran, (2015) 2 SCC 610,** and **State of Karnataka and Another Versus Umesh,** reported in **(2022) 6 Supreme Court Cases 563** insofar as judicial review in a disciplinary proceedings**.**

4. Per contra, learned counsel for the respondents vehemently contended that the petitioner has been provided all opportunity. Even though there is no provision under Bipartite

Settlement dated 10.04.2002 insofar as issuance preliminary charges and seeking reply. Thereafter, proceeded to issue one more charge-sheet and obtained reply. Such proceedings have been adopted by the Disciplinary Authority only to provide ample opportunity of hearing to the petitioner. It is also submitted that the petitioner has admitted the alleged charges, which is pointed out by the respondents insofar as paragraph-23 of the writ petition and so also petitioner's representation. It is further submitted that the present matter is squarely covered by the decision of the Division Bench of this Court insofar as admission of the charges in **L.P.A. No.297 of 2019 (Santosh Kumar Paswan Versus State Bank of India and others) dated 20.02.2024.**

5. Heard the learned counsel for the respective parties.

6. Dates and events are not disputed by either of the parties. The respondents have clearly admitted that list of documents and list of witnesses have not been provided to the petitioner along with the charge-memo and they have also admitted that none of the witnesses have been examined in support of the documents which were relied on by the inquiring officer. In other words, author of the documents, which have

been taken into consideration for the purpose of proving the charges, have not been examined or cross-examined. On these counts, petitioner is entitled to have benefit of interference with the impugned decisions of the Disciplinary and Appellate Authority in the light of principles laid down by the Hon'ble Supreme Court's decision in the case of **State of Karnataka and Another Versus Umesh,** reported in **(2022) 6 Supreme Court Cases 563.** Paragraph-22 of the aforesaid Judgment reads as under:

> **"22.** In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:
>
> (*i*) the rules of natural justice have been complied with;
>
> (*ii*) the finding of misconduct is based on some evidence;
>
> (*iii*) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
>
> (*iv*) whether the findings of the disciplinary

authority suffer from perversity; and

(*v*) the penalty is disproportionate to the proven misconduct. [*State of Karnataka* v. *N. Gangaraj*, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547; *Union of India* v. *G. Ganayutham*, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806; *B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80; *R.S. Saini* v. *State of Punjab*, (1999) 8 SCC 90 : 1999 SCC (L&S) 1424 and *CISF* v. *Abrar Ali*, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310]."

7. Learned counsel for the respondents relied on stated to be admission of the petitioner at paragraph-23 of the writ petition and it read as under:

"23. That moreover all the allegations leveled in the charge memo of year 2006 in which year the father of the petitioner died, his father-in-laws died after a serious illness and his wife suffer a major heart attack and treated in Patna for quite a long time and therefore there was some short of imbalance of his mind which may be the reason for slight deviation from the fixed norms of working in the bank. Even the Enquiry Officer in his enquiry report has found that the bank

has suffered no loss at all."

8. The aforementioned pleadings in the writ petition does not amount to admission of the charges. He has only expressed what was the issues faced by him at the relevant point of time. On the other hand, charges are serious in nature insofar as alleged to have temporary misappropriated money and it is required to be proved in the manner known to the law. The cited decision in the case of **Santosh Kumar Paswan Versus State Bank of India and others,** on factual aspects, it is distinguishable and would not assist the respondents-Bank.

9. In the case of **Roop Singh Negi Versus Punjab National Bank and Others,** reported in **(2009)2 SCC 570**, the Hon'ble Supreme Court in paragraphs-14 and 23 has held as under:

> **"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.

Underline Supplied.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based

> on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."
>
> **Underline Supplied.**

10. In the case of **Union of India and Others Versus Gyan Chand Chattar,** reported in **(2009) 12 SCC 78**, the Hon'ble Supreme Court in paragraphs-20, 22 and 30 has held as under:

> **"20.** So far as Charge 6 i.e. asking for 1% commission for making the payment of pay allowances is concerned, the learned Single Judge has appreciated the evidence of all the witnesses examined in this regard and came to the conclusion that not a single person had deposed before the enquiry officer that the respondent employee had asked any person to pay 1% commission for making payment of their allowances. It was based on hearsay statements. All the witnesses stated that this could be the motive/reason for not making the payment.
>
> **22.** Witnesses were examined before the enquiry officer that they have heard that the said respondent was asking but none of them was able

to point out who was that person who had been asked to pay 1% commission. One of such witnesses deposed that some unknown person had told him. Learned Single Judge came to the conclusion that the knowledge of the witnesses in this regard was based on "hearsay statement of some unknown persons whom they did not know". This was certainly not legal evidence to sustain such a serious charge of corruption against an employee.

30. Charge 6 was basically based on hearsay statement and it is difficult to assume as to whether enquiry could be held on such a vague charge. Charge 6 does not reveal as to who was the person who had been asked by the respondent to pay 1% commission for payment of pay allowances. It is an admitted position that if a charge of corruption is proved, no punishment other that dismissal can be awarded."

11. In the case of **Union of India and Others Versus P. Gunasekaran,** reported in **(2015) 2 SCC 610,** the Hon'ble Supreme Court in paragraphs-12, 13, 14, 15 and 16 has held as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the

evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(*a*) the enquiry is held by a competent authority;

(*b*) the enquiry is held according to the procedure prescribed in that behalf;

(*c*) there is violation of the principles of natural justice in conducting the proceedings;

(*d*) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(*e*) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(*f*) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(*g*) the disciplinary authority had erroneously

failed to admit the admissible and material evidence;

(*h*) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(*i*) the finding of fact is based on no evidence.

Underline Supplied.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(*i*) reappreciate the evidence;

(*ii*) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(*iii*) go into the adequacy of the evidence;

(*iv*) go into the reliability of the evidence;

(*v*) interfere, if there be some legal evidence on which findings can be based.

(*vi*) correct the error of fact however grave it may appear to be;

(*vii*) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in *State of A.P.* v. *S. Sree Rama Rao* [AIR 1963 SC 1723] , many of the above principles have been discussed and it has been concluded thus : (AIR pp. 1726-27, para 7).

"*7*. … The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant

considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In *State of A.P.* v. *Chitra Venkata Rao* [(1975) 2 SCC 557 : 1975 SCC (L&S) 349 : AIR 1975 SC 2151] , the principles have been further discussed at paras 21-24, which read as follows : (SCC pp. 561-63)

"*21*. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P.* v. *S. Sree Rama Rao* [AIR 1963 SC 1723] . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction

of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair

decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in *Railway Board* v. *Niranjan Singh* [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh case* [(1969) 1 SCC 502 : (1969) 3 SCR 548] this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air

compressor at about 8.15 a.m. on 31-5-1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding,

the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See *Syed Yakoob* v. *K.S. Radhakrishnan* [AIR 1964 SC 477] .)

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that

the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. These principles have been succinctly summed up by the living legend and centenarian V.R. Krishna Iyer, J. in *State of Haryana* v. *Rattan Singh* [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] . To quote the unparalleled and inimitable expressions : (SCC p. 493, para 4)

"*4*. … in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian

Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

12. In the case of **S.C. Girotra Versus United Commercial Bank (UCO Bank) and Others,** reported in **1995 Supp (3) SCC 212**, the Hon'ble Supreme Court in paragraphs-3 and 5 has held as under:

"3. Admittedly, the disciplinary authority while making the order of dismissal stated as under:

"The presenting officer has submitted 28 exhibits, most of which are in the form of certificates of Shri Rajinder Paul and B.B. Bhatia, Officer and the then Assistant Manager of the branch, while one document (PEX-26) is in the form of inspection/ investigation report of Shri V.P. Jindal and Shri J.R.

> Sharma. The certificates and inspection-cum-investigation report are most comprehensive documents.
>
> Inspection-cum-Investigation report has been prepared by two senior officers of the then Division Office, Punjab Division, Chandigarh, after their painstaking efforts of about two months. This has been substantiated by various certificates of the two officers of the branch.
>
> All the four officers appeared before the Enquiry Officer and testified to their authorship of the documents. Their certificates/Inspection-cum-Investigation Report comprehensively cover all the allegations/charges made/levelled in the charge-sheet. They have also been supported by other documents."

From the above extract it is clear that the report on which reliance was placed by the disciplinary authority was a comprehensive document in which conclusions were reached against the appellant on the basis of materials including the books and records of the bank as well as some certificates issued by officers of the bank which constituted evidence in support of the charges levelled against the

> appellant. It is also clear that no opportunity was given to the appellant to cross-examine either the makers of that report, Mr V.P. Jindal and Mr J.R. Sharma or the officers who had granted such certificates which formed evidence to prove the charges which led to the order of dismissal passed by the disciplinary authority, even though those persons were examined for the purpose of proving the documents relating to them. In our opinion, the grievance made by the appellant that refusal of permission to cross-examine these witnesses was denial of reasonable opportunity of defence to the appellant, is justified.
>
> **Underline Supplied.**

5. In view of the infirmity in the inquiry indicated earlier, it is appropriate that the inquiry proceedings are set aside from the stage of the enquiry report and the respondent-bank is directed to conduct the inquiry afresh from that stage giving the appellant due opportunity to defend himself. For this purpose the appellant should be given the opportunity to cross-examine V.P. Jindal, J.R. Sharma, Rajinder Paul and B.B. Bhatia who were examined by the management in support of the charges. The Enquiry Officer must then conclude the inquiry and make the report on the entire materials before him. Further action must then be taken in accordance

> with law based on the finding given by the Enquiry Officer. In the circumstances of the case, we also direct that the appellant shall remain under suspension from today and he be dealt with according to the rules and regulations applicable to him in this behalf. The appellant, during the period of his suspension commencing from today shall be paid subsistence allowance at the current rates in accordance with the rules. The appellant shall report to the Zonal Manager, Chandigarh Zone of the respondent-bank on 1-3-1994 for taking further directions in this behalf and he shall fully cooperate with the authorities to enable completion of the inquiry as early as possible and preferably by the end of May 1994."

13. In the light of these facts and circumstances, petitioner has made out a case so as to interfere with the impugned orders. Accordingly, impugned orders dated 14.11.2009 passed by the Disciplinary Authority and dated 19.02.2010 passed by the Appellate Authority are set aside.

14. Instant writ petition stands allowed.

15. The concerned respondents are hereby directed to extend 50% of monetary benefits to the petitioner during the intervening period from the date of removal from service till attaining the age of superannuation and retired from service and other retiral service benefits viz., monetary benefits. The above

exercise shall be completed within a period of six months from the date of receipt of this order.

(P. B. Bajanthri, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.02.2025.
Transmission Date	NA