

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.310 of 2020

In
Civil Writ Jurisdiction Case No.17942 of 2019

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1. The Managing Director and CEO, Bank of India, C-5, G-Block BKC, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra-51.
 2. The Zonal Manager-Cum-Appellate Authority, Bank of India, Patna Zone, Chankya Place, 1st Floor, Birchand Patel Marg, Patna.
 3. The Assistant General Manager, Bank of India-Cum-Disciplinary Authority, Zonal Officer, Patna Zone, Chanakya Tower, R.Block, Patna.
 4. The General Manager, Block of India, HRD, IR Division, Star House, C-5, G-Block BKC, Bandar Kurla Complex, Bandra (East). Mumbai, Maharashtra-51.

... .. Appellant/s

Versus

Nagendra Sharma Son of Subhash Singh Resident of Mohalla-Maurya Vihar Colony, Walmi Canal Road, Near Devi Asthan, Police Station-Phulwarisharif, District-Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3823 of 2024

Nagendra Sharma son of Late Subhansh Singh, resident of Maurya Vihar Colony, Walmi Canal Road, near Devi Asthan, Police Station-Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

1. The Managing Director and CEO, Bank of India C-5, G- Block BKC Bandra Kurla Complex Bandra (East), Mumbai, Maharastra- 51.
2. The Zonal Manager-cum-Appellate Authority, Bank of India, Patna Zone, Chanakya Place 1st Floor, Birchand Patel Marg, Patna.
3. The Deputy General Manager, NBG Bihar and Disciplinary Authority, Bank of India, 3rd Floor Uday Bhawan, Frazer Road, Patna-1.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 310 of 2020)

For the Appellant/s : Mr. Ajay Kumar Sinha, Sr. Advocate
Mr. Ajit Kumar Sinha, Advocate
Miss Dilkash Khan, Advocate
Miss Minu Kumari, Advocate
For the Respondent/s : Mr. Aditya Narain Singh, Advocate
Mr. Kundan Kumar Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 3823 of 2024)



For the Petitioner/s : Mr. Aditya Narain Singh, Advocate
Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s : Mr. Ajay Kumar Sinha, Sr. Advocate
Mr. Ajit Kumar Sinha, Advocate
Miss Dilkash Khan, Advocate
Miss Minu Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-05-2024

Heard learned counsels for the respective parties. Letters Patent Appeal No. 310 of 2020 and CWJC No. 3823 of 2024 are heard together with consent of the respective parties.

2. In the instant Letters Patent Appeal No. 310 of 2020, the appellants have prayed for the following relief(s):-

"That this memorandum of appeal is being filed against the judgment/order dated 28.05.2020 passed by Hon'ble Mr. Justice Chakradhari Sharan Singh in CWJC No. 17942 of 2019 by which the writ petition was allowed with cost of Rs. 10,000/- to be paid by the Bank to the respondent-writ petitioner with further order that the respondents-writ petitioner shall be obliged to substitute the same punishment which was imposed on Uma Shankar Diwedi in place of punishment earlier imposed against the petitioner from the date the same was originally imposed. The Bank will be required to proceed thereafter for the purpose of determination of entitlements of the petitioner accordingly."

3. In the instant writ petition, i.e., CWJC No. 3823 of 2024, the petitioner has prayed for the following relief(s):-



"The petitioner has prayed to set aside the order dated 17.02.2024 containing in Ref. No. NBC(B):IR VIG-104:23-24:119 issued under the signature of Sri Manish Kar Ray, Deputy General Manager NBG Bihar-cum-Disciplinary Authority, Bank of India and further be pleased to declare the impugned order of dismissal from service dated 17.02.2024 null and void since it has been passed in complete violation the direction issued by this Hon'ble Court in L.P.A. No. 310 of 2020."

4. Brief facts of the case are that respondent-Nagendra Sharma, Manager, Junior Management Group (Scale-I) in Letters Patent Appeal No. 310 of 2020 was subjected to disciplinary proceedings and charge-memo was issued on 24.07.1998 based on preliminary inquiry conducted by Vigilance on 06.07.1997. Vigilance inquiry report dated 06.07.1997 has resulted in initiation of departmental inquiry against Nagendra Sharma and Uma Shankar Divedi. Nagendra Sharma being an Officer, he was governed by the Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 whereas Uma Shankar Divedi, Award Staff was governed by Industrial Disputes (Banking Companies) Decision Act, 1955 (Act 41 of 1955) even though both the persons were involved in common alleged misdeeds. Both were subjected to disciplinary proceedings insofar as Nagendra Sharma is concerned, it was concluded in imposition of penalty of dismissal



from service on 06.12.2000. Similarly, Uma Shankar Divedi was punished with withholding of certain allowances.

5. In this backdrop, Nagendra Sharma filed CWJC No. 11938 of 2003 insofar as dismissal order dated 06.12.2000 read with appellate authority and reviewing authority orders dated 09.04.2002 and 30.09.2002. The learned Single Judge has allowed the writ petition while setting aside the punishment *vide* order dated 23.08.2018 passed in CWJC No. 11938 of 2003. Para 6 of the order reads as under:-

"6. For the reasons mentioned hereinabove as also in view of the law laid down by the Hon'ble Apex Court, I find that since the petitioner herein and the aforesaid Uma Shankar Diwedi were leveled with the allegations arising out of the same transaction/ incident of misconduct, parity ought to have been maintained in the matter of inflicting punishment. In such view of the matter, the appellate order/order of review dated 30.09.2002 and the original order of punishment of dismissal dated 06.12.2000 are set aside and the matter is remitted back to the disciplinary authority to consider the entire matter as far as the quantum of punishment is concerned, in light of the judgment rendered by the Hon'ble Apex Court in the case of Rajendra Yadav (supra). It is needless to state that the petitioner will be at liberty to raise all other issues/ contentions for the purposes of assailing the impugned order dated 06.12.2000 and 30.09.2002 at appropriate moment, if need be."



6. Disciplinary authority in the guise of implementation of the orders of this Court dated 23.08.2018 passed in CWJC No. 11938 of 2003 proceeded to impose same penalty of dismissal from service on 13.02.2019 it is to be noted that neither disciplinary authority nor respondent-Nagendra Sharma preferred any appeal (LPA).

7. Dismissal order dated 13.02.2019 was subject matter of another CWJC namely CWJC No. 17942 of 2019 and it was allowed on 28.05.2020. Hence, the present LPA by the Bank of India. During pendency of LPA and in the course of the argument, we have noticed that there was a non-application of mind insofar dismissal order dated 13.02.2019 instead of setting aside and remand the matter to the disciplinary authority. We are of the view that respondent-Nagendra Sharma was subjected to disciplinary proceedings in the year 1997 and it was concluded initially while imposing penalty of dismissal of service on 06.12.2000 and, thereafter, it was allowed on 23.08.2018 followed by second dismissal order on 13.02.2019 and it was allowed on 28.05.2020. Taking note of these dates and events, in pending LPA matter we have directed the disciplinary authority to pass detail speaking order. To that effect detail speaking order has been passed on 17.02.2024. We have permitted respondent-Nagendra Sharma to



file fresh writ petition insofar questioning the fresh order of dismissal dated 17.02.2024 and such writ petition be listed along with LPA No. 310 of 2020. Thus these two matters are taken up for final disposal.

8. Learned counsel for the appellant-Bank vehemently contended that disciplinary authority passed a fresh order on 17.02.2024 pursuant to our earlier order and it is speaking order and relatively compared factual aspects of the matter read with the responsibility of respondent-Nagendra Sharma and Uma Shankar Divedi. They are governed by separate set of Rules insofar as initiation of departmental inquiry and its conclusion. Responsibility with respondent-Nagendra Sharma is on higher side. Therefore, dismissal penalty would be commensurate with alleged misdeeds committed by him while holding the post of Manager.

9. *Per contra*, learned counsel for the respondent-Nagendra Sharma resisted the aforementioned contentions to the extent that respondent-Nagendra Sharma shall not be once again imposed the penalty of dismissal in view of para 6 of the order of the learned Single Judge dated 23.08.2018. It is also submitted that merely comparison of duties and responsibilities of Manager and Assistant (Nagendra Sharma and U.S. Dwivedi) are not relevant. The disciplinary authority, in all fairness, should not have



discriminated while imposing the penalty of dismissal for respondent-Nagendra Sharma, on the other hand, withholding of certain allowances against Uma Shankar Divedi. Imposition of penalty of dismissal would be too harsh while comparing with the penalty imposed on Uma Shankar Divedi.

10. Taking note of these dates and events narrow issue involved in the present *lis* is whether respondent-Nagendra Sharma would be punished with dismissal order for the second time pursuant to the orders of this Court dated 23.08.2018 passed in CWJC No. 11938 of 2003 of the learned Single Judge or not? It is to be noted that neither of the parties have invoked remedy of LPA insofar as assailing the order of the learned Single Judge dated 23.08.2018 passed in CWJC No. 11938 of 2003, in other words, it has attained finality. Reading of para 6 of the order dated 23.08.2018 (cited supra) disciplinary authority was required to remove the discrimination in imposing penalty among respondent-Nagendra Sharma and Uma Shankar Divedi. Uma Shankar Divedi has been punished with minor penalty, on the other hand, Nagendra Sharma has been punished with major penalty. Having regard to the fact that alleged inquiry is in respect of the year 1997-98 read with the order of the learned Single Judge dated 23.08.2018 passed in CWJC No. 11938 of 2003 has attained final-



ity and only to the extent of imposing non-discriminatory penalty read with punishment imposed on Uma Shankar Divedi in respect of alleged allegations are identical except duties and responsibilities with reference to their status in the Bank. Merely, Nagendra Sharma was holding the post of Manager and Uma Shankar Divedi was holding the post of clerical cadre. Imposition of punishment cannot be so discriminatory to the extent that imposition of minor penalty on Uma Shankar Divedi while imposing major punishment of dismissal on Nagendra Sharma. Again, it is a matter of remand for the reasons that there is no proper analysis to what extent Nagendra Sharma is more responsible than Uma Shankar Divedi. Even assuming that duties and responsibilities of Nagendra Sharma as a Manager may be higher, in such circumstances, imposition of penalty of dismissal from service would be too harsh. Normally, the Court will not modify penalty unless it is shocking to the conscious of the Court. However, the aforementioned principle is not attracted in the case in hand for the reasons that respondent-Nagendra Sharms is before judicial forum from the year 2003 and it is more than a decade. Therefore, having regard to duties and responsibilities read with the alleged allegations levelled against Nagendra Sharma, we are of the view that imposition of penalty of dismissal would be too harsh and it is accordingly mod-



ified to that of compulsory retirement. Therefore, fresh order dated 17.02.2024 which is a subject matter of CWJC No. 3823 of 2024 stands modified to the above extent namely dismissal penalty to that of compulsory retirement with effect from 06.12.2000.

11. Accordingly, both the Letters Patent Appeal No. 310 of 2020 and CWJC No. 3823 of 2024 stands disposed of. The respondents-Bank are hereby directed to calculate monetary benefits as if Nagendera Sharma has been punished with penalty of compulsory retirement w.e.f. 06.12.2000, the date on which first dismissal order was passed. To the above effect all the respective orders including order of the learned Single Judge stands modified. The monetary benefits shall be disbursed to Nagendra Sharma-respondent in LPA No. 310 of 2020 within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

