

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.14714 of 2012**

In the matter of an application under Article 226 & 227 of the Constitution of India.

-----  
**Rabi Narayan Nanda** .... **Petitioner**

**-versus-**

**Utkal Gramya Bank & Another** .... **Opposite Parties**

**For Petitioner** : **Mr. A. Mishra, Advocate**

**For Opposite Parties** : **Mr. P.V. Balakrishna, Advocate**

**CORAM:**

**JUSTICE V. NARASINGH**

**DATE OF HEARING : 03.07.2023**

**DATE OF JUDGMENT: 03.07.2023**

**V. Narasingh, J.**

1. Heard learned counsel for the petitioner and learned counsel for the Opposite Parties.

2. The petitioner while working as Branch Manager of Utkal Gramya Bank, Boudh Branch instituted an FIR against one Ajay Kumar Praharaj Clerk-cum-Cashier for defalcation to

the tune of Rs.25,40,586/-(Rupees twenty five lakhs forty thousand five hundred eight six only) and soon thereafter the petitioner was placed under suspension for dereliction of duty in connection with misappropriation of the Bank money by Mr. Ajay Kumar Praharaj Clerk-cum-Cashier and also on account of other irregularities, such as AGL. Gold loan accounts, other loans and advances and after enquiry show cause was issued seeking an explanation regarding proposed punishment and on receipt of the same, the following punishment was imposed vide Annexure-16.

XXX XXX XXX

*2. After careful consideration of your above representation/ submission, as well as your submission, in the personal hearing on dt.27.08.2011, it has been decided by the undersigned in terms of Regulation No.39 (I) of Utkal Gramya Bank (Officers & Employees) Service Regulations, 2010 to impose penalty of "Reduction of basic pay to Rs/-16,900/- for a period of one year with cumulative effect, (ii) The period of suspension will be treated as such i.e. not spent on duty and you will not earn any increment for the said period, (iii) Bank reserves the right to proceed further in the case based upon the outcome of the police/court case."*

XXX XXX XXX

3. In terms of regulations of the Bank, the petitioner preferred an appeal against the punishment so awarded and the same was disposed of by order dated 04.04.2012 at Annexure-18.

4. Assailing the order of punishment dated 16.08.2011 and the order of Appellate Authority dated 04.04.2012 at Annexure-16 & 18 respectively, the present Writ Petition has been filed.

4-(A). It is apt to note here that inadvertently Annexure-15, show cause against proposed punishment has been assailed instead of Annexure-16, the order of punishment.

5. It is borne out from the affidavit filed by the Opposite Party-Bank that during the pendency of the Writ Petition, the Opposite Party-Bank instituted a Civil Suit in the Court of Civil Judge (Senior Division), Boudh numbered as Civil Suit No.82/2009 in which one Ajay Kumar Praharaj who was the Cashier-cum-Clerk was arrayed as defendant and the alleged pecuniary loss which was also ascribed to the present petitioner i.e Rs.25,40,586/-(Rupees twenty five lakhs forty thousand five hundred eight six only) was the subject matter of the said suit and the issues framed therein are extracted hereunder for convenience of ready reference.

4. xxx xxx xxx

1. *Whether the suit is maintainable?*

2. *Whether the plaintiff has any cause of action to bring the suit against the defendant?*

3. *Whether the suit is barred by law of limitation?*

4. *Whether the defendant Ajaya Kumar Praharaj received case of Rs.25,33,125 on 7.1.2008 after signing in the vault register of the bank for transactions in the cash counter?*

5. *Whether the defendant received cash of Rs.5.41,430/- from different customers in the cash counter?*

6. *Whether the defendant received Rs.7400/- from the customers and he did not show the same in the receipt cum payment register?*

7. *Whether the defendant is liable to pay Rs.25,40586/- with Interest @ 18% P.A. to the bank?*

8. *Whether the properties of the defendant as per the schedule F is liable to be attached towards the satisfaction of the decretal amount?*

9. *What other relief(s), the parties are entitled?*

XXX XXX XXX

6. After detailed examination of materials on record, the learned Trial Court passed a judgment whereby it was held that the plaintiff Bank is entitled for a decree of Rs.25,40,586/- (Rupees twenty five lakhs forty thousand five hundred eight six only) along with an interest at the rate of 4% per annum from the defendant who is the Cashier-cum-Clerk and it is the categorical finding of the learned Trial Court that it is the defendant, who is responsible for the said loss.

7. It is on record that the Bank has filed Execution Case numbered as EP Case No.4/2015 before the learned Civil Judge (Senior Division), Boudh for execution.

8. It is the contention of the learned counsel for the petitioner, Mr. A. Mishra that the impugned order of Disciplinary Authority at Annexure-16 suffers from the vices of violation of principle of natural justice inasmuch as documents, which have a bearing on the point at issue, were not provided to the petitioner and adequate opportunity to cross-examine the witnesses was also not afforded. The order is also assailed on the count of proportionality.

9. Per contra, learned counsel for the Opposite Party-Bank, Mr. Balakrishna submits that there are no materials on record to substantiate the allegation of violation of natural justice and it is his submission that taking into account that the petitioner was working in a financial institution in the given facts the Disciplinary Authority as well as the Appellate Authority have taken liberal view and as such keeping in view the limited jurisdiction of the Courts in the matter of interference in Disciplinary Proceeding, the Writ Petition is liable to be rejected and in this context learned counsel for the Opposite Party-Bank relies on the judgment of the apex Court in the case of **Deputy General Manager and Others vs. Ajai Kumar Srivastava** reported in **(2021) 2 SCC 612**.

10. Assailing the said order of the Disciplinary Authority, the petitioner preferred an appeal and the memorandum of appeal is also on record at Annexure-17. The relevant paragraphs of the appeal is quoted hereunder for convenience of ready reference.

“A-(1)- xxx xxx xxx

(2)- *The vital documents on which I intend to rely for my defense was not provided to me intentionally on the ground that those are not relevant to the charges, the details of which was conveyed to the Chairman & D.A. vide my letter Dt.10.12.2010.a copy of which is enclosed here with for your kind reference & perusal.*

(3)- xxx xxx xxx

(4)- xxx xxx xxx

(5)- xxx xxx xxx

(6)- xxx xxx xxx

B-(1)- xxx xxx xxx

(2)- The incident of Misappropriation of cash by Sri A.K. Praharaj C.C. was an event of a particular day i.e. on dt.07.01.08 as per all available records including the F.I.R.. lodged by the Bank at Boudh Police Station. Incidentally, at no point of time or no where Sri Praharaj had ventilated/stated my involvement in any manner what so ever in the misappropriation of Rs.2540586/-on Dt. 07.01.08. Besides, I have also not been charge sheeted for misappropriation for the said amount nor any involvement in that misappropriation.

Thus when Bank has not suffered any financial loss, it is an arbitrary decision of the D.A to put me in to financial loss by reducing my basic to Rs.16900/- which is almost the initial basic pay of a scale -I officer at the verge of my service tenure at the bank.

C- xxx xxx xxx

10. The Appellate Authority passed the order at Annexure-18, which is extracted hereunder.

xxx xxx xxx

BANK'S BOUDH BRANCH  
DISCIPLINARY PROCEEDINGS  
APPEAL AGAINST THE IMPOSED  
PENALTY

Please refer to your appeal dated 18th November 2011.

2. The Appellate Authority i.e. the Bank's Board of Directors thoroughly examined your appeal and upheld the penalty imposed on you by the Competent Authority and Chairman 3.4.12 vide Head Office letter No. VIGIL/356(A) dt.28.09.2011.

3. Please return to us immediately the duplicate copy of this letter duly signed by you

*with date in token of your having received the original.*

XXX XXX XXX

11. Referring to the aforesaid order passed by the Appellate Authority, it is submitted by the learned counsel for the petitioner Mr. Mishra that ex-facie, the same suffers from the vice of lack of reasoning and on that account alone the appellate order is liable to be set aside and in this context he relies on the judgment of the apex Court **Kranti Associates vs. Masood Ahmed Khan** reported in **(2010) 9 SCC 496**.

12. After taking note of all the judgments, the apex Court in the case of **Kranti Associates (Supra)** reiterated the seminal importance of recording of reasons even while taking an administrative decision, if such decision affects anyone prejudicially. Paragraph-47 of the said judgment summarizing the decision of the Court is extracted hereunder:-

★ XXX XXX XXX ★

*47. Summarising the above discussion this Court holds;*

*(a) In India the judicial trend has always been to record reasons, even in administrative decisions, such decisions affect anyone prejudicially.*

*(b) A quasi-judicial authority must record reasons in support of its conclusions.*

*(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

*(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the sole of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support decisions must be cogent, clear and succinct. A pretence of reasons “**rubber-stamp reasons**” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial



*powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor)*

*(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions."*

*(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".*

XXX XXX XXX

13. In Paragraph-L of the above summary, the apex Court has been categorical that the reasons have to be cogent, clear and succinct and deprecated "pretence" of recording such reasons or "rubber-stamp reasons" since the same cannot conform to the norms of a just decision making process.

14. Examined on the touch stone of the said judgment of **Kranti Associates (Supra)**, this Court find force in the submission of the learned counsel for the petitioner Mr. Mishra that the appellate order is liable to be set aside on the ground of lack of reasoning.

15. Relating to the quashing of the order passed by the Disciplinary Authority, it is worth noting that the charges faced

by the petitioner admittedly not confined only to misappropriation of Bank's money worthy Rs.25,40,586/- alone and hence the plea for quashing the Disciplinary Proceeding and the punishment imposed vide Annexure-16 (wrongly stated as Annexure-15 as noted ) on the ground of violation of natural justice and proportionality is untenable and does not merit consideration in view of the law laid down by the apex Court in the case of **Deputy General Manager (Supra)**, wherein the contours of exercise of power by constitutional Courts while dealing with Disciplinary Proceeding has been dealt with.

16. Paragraph-28 thereof is extracted hereunder for convenience of ready reference:-

XXX XXX XXX

*“The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”*

XXX XXX XXX

17. On close scrutiny of materials on record and keeping in view the law laid down by the apex Court in the case of **Deputy General Manager (Supra)** and paragraph-28 thereof, extracted hereinabove, this Court is not persuaded to hold that the order of Disciplinary Authority is liable to be quashed.

18. On a conspectus of materials on record, this Court is of the considered view that ends of justice would be sub served, if the matter is relegated to the Appellate Authority, to pass a reasoned order.

18-(A). It shall be open to the petitioner to file additional memorandum of appeal if so advised to bring on record the relevant materials which would enable the Appellate Authority to come to a cogent finding.

19. While rehearing the appeal of the petitioner, the Appellate Authority shall also take into account the judgment passed by the learned Civil Judge adverted to hereinabove, directing for recovery from the defendant Ajay Kumar Praharaj in the light of categorical finding that the financial irregularity is solely attributed to him in as much as, it is now on record that in the process of the delinquency committed by the said Praharaj, the Bank suffered the pecuniary loss. As such, prima facie the petitioner cannot be attributed with any negligence in the matter of causing any pecuniary loss. And, as noted execution case has already been initiated for recovering the said loss.

20. This Court has no iota of doubt that the Appellate Authority shall apply its mind and give due weightage to such finding of the Civil Court, pass reasoned order on examination of the statement of witnesses and through scrutiny of documents by providing personal hearing to the petitioner or his authorized representative and also taking into account other contentions in the memorandum of Appeal and the additional memorandum of Appeal, if petitioner chooses to file the same.

21. Since it is stated that the petitioner has retired since 2018, the Appellate Authority shall do well to dispose of the appeal within a period of six months from the date of receipt/production of the copy of this order.
22. For the reasons recorded above, the order of the Appellate Authority at Annexure-18 is hereby set aside.
23. Accordingly, the Writ Petition stands disposed of. No costs.

*(V. Narasingh)*  
*Judge*

*Orissa High Court, Cuttack,*  
*Dated the, 3<sup>rd</sup> July, 2023/Ayesha*

