

IN THE COURT OF SHRI RAJ KUMAR: ADDL. DISTRICT
JUDGE-09: TIS HAZARI COURTS : DELHI

Suit No. 50/14 (Old Suit No. 02/09)
Unique Case ID No. 02401C0348412009



Sh. Faqir Chand Sharma
S/o late Banarsi Dass Sharma,
R/o 34/40, IIInd Floor,
Old Rajender Nagar, New Delhi.

..... Plaintiff.

VERSUS

State Bank of Patiala,
Through it's Managing Director
HO, The Mall, Patiala.

..... Defendant.

Date of institution of the suit : 04.08.2009
Date on which order was reserved : 22.02.2016
Date of decision : 30.03.2016

SUIT FOR DECLARATION U/S 9 R/W SECTION 19 OF THE
CIVIL PROCEDURE CODE

JUDGMENT

The facts in brief, necessary for the disposal of the present suit filed by the plaintiff as disclosed in the plaint, are that the plaintiff joined the services of the State Bank of Patiala on 04.05.1970. It has been further stated that during the tenure of his service, the plaintiff was transferred from Bali Nagar, New Delhi Branch to Patna Branch on the

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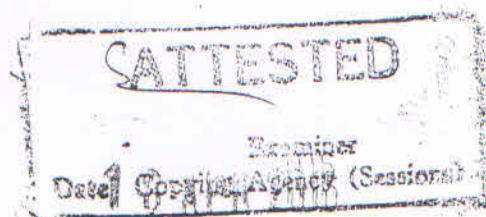
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post of Manager and he was relieved on 22.04.2006 for Patna branch. It has been further stated that the plaintiff had to join his duties at Patna branch of the defendant bank on 01.05.2006 after availing the joining time of one week. It has been further stated that unfortunately, plaintiff suddenly fell ill in between the joining period and he could not join his duties at Patna branch. It has been further stated that the plaintiff sent his leave applications alongwith medical certificates of his illness from the Govt. hospitals, where he was under treatment and informed his controllers about his inability to resume duty due to his ill health. It has been further stated that it took approximately one year to recover from the illness and since the plaintiff recovered from his illness and got the fitness certificate from the doctor, he again joined the services at Patna branch with his full devotion. It has been further stated that during the course of plaintiff's treatment, the Disciplinary Authority has not initiated any inquiry proceedings against the plaintiff regarding the alleged unauthorized absence/ sick leave taken by him due to acute illness. It has been further stated that the Disciplinary Authority vide impugned order dated 31.03.2007 has imposed the penalty of "reduction of his basic pay by one stage for a period of one year" as treating the plaintiff's sick leave as unauthorized absence, which is illegal and unjustified. It has been further stated that aggrieved by the impugned order dated 31.03.2007, the plaintiff filed an appeal. It has been further stated that vide impugned order dated 09.07.2007, the Appellate Authority upheld the said orders passed by the Disciplinary Authority. It has been further stated that the plaintiff challenged the said orders dated 31.03.2007 and 09.07.2007 before the Reviewing Authority and vide orders dated 05.10.2007, the

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appeal of the plaintiff was allowed and major penalty of reduction of the basic pay of the plaintiff by one stage for a period of one year to minor penalty of 'Censure' against the unauthorized absence/ sick leave of the plaintiff. It has been further stated that after completion of the inquiry proceedings, Sh. A.S. Bhatia (Inquiry Officer) has made his Inquiry Findings report on 27.05.2008 and held the charge proved against the plaintiff. It has been further stated that the disciplinary authority considering the enquiry findings again has imposed the penalty of 'Censure' against the plaintiff by treating the period of 01.04.2007 to 20.05.2007 as unauthorized absence in terms of Regulation 67(e) of The State Bank of Patala (Officers) Service Regulations, 1979 vide orders dated 24.07.2008. It has been further stated that the penalty of 'Censure' is imposed after the conclusion of the inquiry proceedings. It has been further stated that the plaintiff again made a request to the defendant bank to release his salary for the period of 01.05.2006 to 20.05.2007, but, the defendant bank failed to release the salary of the plaintiff. It has been further stated that the defendant bank took the stand that the salary of the plaintiff for the said period could not be released as per the impugned orders of AGM I(B) vide his letter no. Staff 7161 dated 17.11.2008 and GMO orders dated 11.11.2008 as the said Authorities had treated the abovesaid period of sick leave of the plaintiff as unauthorized absence from duty. It has been further stated that the abovesaid orders passed by the concerned Authorities are arbitrary, illegal and unjustified. It has been further stated that on 28.02.2009, the plaintiff has taken voluntary retirement after giving three months notice. It has been further stated that after imposing the penalty of 'Censure', the plaintiff cannot be burdened

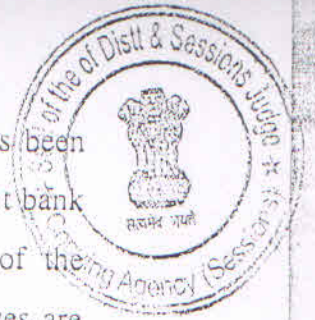
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with one more punishment of non-releasing of the salary. It has been further stated that the impugned action on the part of the defendant bank is illegal, unjustified and violative of Articles 14, 16 & 21 of the Constitution of India. It has been further stated that the sick leaves are available to the plaintiff. It has been further stated that during the inquiry proceedings, the plaintiff had produced the relevant medical documents, which were not perused and considered by the Inquiry Officer and other authorities. It has been further stated that the medical prescriptions submitted by the plaintiff clearly show that the plaintiff was prescribed the bed rest during his sick leave period. It has been further stated that the inquiry proceedings have been held against the Principles of Natural Justice and against the settled principles of law. It has been further stated that the present suit has been instituted against the impugned order dated 17.11.2008 passed by AGM I(B) and GMO orders dated 11.11.2008 as the said Authorities have treated the abovesaid period of sick leave of the plaintiff as unauthorized absence from duty while imposing penalty of 'Censure' upon him and non-releasing the salary of the plaintiff for the period of 01.05.2006 to 20.05.2007. It has been further stated that the plaintiff also sent a legal notice on 21.05.2009, but, till now, no reply has been received so far. It has been further stated that 342 days full pay medical leaves of the plaintiff are still unpaid alongwith about 11 days unavailed casual leaves are also unpaid by the defendant bank.

2. On the basis of the abovesaid allegations as contained in the plaint, the plaintiff has prayed for a decree of Declaration to the effect that non-releasing of the amount of the salary of the plaintiff for the period of 01.05.2006 to 20.05.2007 is illegal and unjustified. The

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plaintiff has also prayed for a decree of Declaration to the effect that non-releasing of the amount of the payment for the pending sick leaves of about 350 days to the plaintiff by the defendant bank is illegal and unjustified. The plaintiff has further prayed for a decree of Declaration to the effect that the inquiry conducted against the plaintiff was illegal and unjustified. It has been further prayed by the plaintiff that the defendant bank be directed to pay the amount of Rs. 6,08,123/- to the plaintiff as his salary for the period from 01.05.2006 to 20.05.2007 alongwith the interest @ 16.5% per annum. It has been further prayed by the plaintiff that the defendant bank be directed to pay the amount of Rs. 50,000/- to the plaintiff as compensation for the harassment suffered by the plaintiff by the illegal and unjustified acts of the defendant bank. It has been further prayed by the plaintiff that the defendant bank be directed to pay the litigation charges of Rs. 15,000/- to the plaintiff.

3. Written statement has been filed on record by the defendant bank stating therein that the plaintiff has not come to the Court with clean hands. It has been further stated that the plaintiff was relieved from Bali Nagar, New Delhi Branch on 22.04.2006 and he had to join his duties on 01.05.2006 at Patna branch after availing the joining time of one week. It has been further stated that the plaintiff did not report for duty at Patna Branch of the defendant bank and rather, submitted his leave application dated 01.05.2006 for his leave from 01.05.2006 to 10.05.2006 on medical grounds. It has been further stated that the plaintiff was required by AGM-III(D) Lucknow Controlling Authority of Patna Branch vide letter dated 13.05.2006 to get himself medically examined from Chief Medical Officer (CMO) and to submit the medical report of CMO. It has been

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further stated that on the contrary, the plaintiff submitted his leave application for extension of leave upto 20.05.2006, which was rejected by the AGM-III(D) Lucknow vide letter dated 26.05.2006. It has been further stated that the plaintiff was again advised to get himself examined from the Chief Medical Officer (CMO) and to join at Patna Branch. It has been further stated that the letter dated 26.05.2006 was also addressed to Chief Medical Officer, Ram Manohar Lohia Hospital, New Delhi and the said letter was also endorsed to the plaintiff for the said purpose. It has been further stated that the notice was published by the defendant bank in "Hindustan Times" on 28.05.2006, whereby, he was advised to report for duty within 7 days from the date of publication of the notice, but, despite the said notice, the plaintiff did not report for duty and continued to absent himself unauthorizedly. It has been further stated that the plaintiff was further advised by the AGM-III(D) Lucknow vide letter no. 4613 dated 17.06.2006 that his letters were not being considered and he was being considered as absent from duty unauthorizedly for non-joining of his duties at Patna Branch. It has been further stated that the plaintiff absented himself unauthorizedly without submitting the required medical report of the Chief Medical Officer, Ram Manohar Lohia Hospital, New Delhi. It has been further stated that the plaintiff had contravened Regulations 50(1) and 58(2) of the State Bank of Patiala (Officers) Service Regulations, 1979 which constituted misconduct in terms of Regulation 66 of the State Bank of Patiala (Officers) Service Regulations, 1979. It has been further stated that the plaintiff had rendered himself liable for disciplinary action under Regulation 67 of the State Bank of Patiala (Officers) Service

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Regulations, 1979. It has been further stated that in the circumstances enumerated hereinabove, the Statement of Imputation of Lapses dated 29.08.2006 was served upon the plaintiff. It has been further stated that the General Manager (Op) (Disciplinary Authority) vide his order dated 31.03.2007 came to the conclusion that there was no justification in the unauthorized absence of the plaintiff and as such, vide orders dated 31.03.2007 a penalty of "reduction of his basic pay by one stage for a period of one year" was imposed. It has been further stated that the plaintiff preferred an appeal on 22.05.2007 and the Chief General Manager vide orders dated 09.07.2007 dismissed the appeal of the plaintiff. It has been further stated that the plaintiff filed a review application dated 25.07.2007 before the Managing Director (Reviewing Authority), who took a lenient view and vide orders dated 05.10.2007 reduced the penalty of the plaintiff to 'Censure' in terms of Regulation 67(a) of the State Bank of Patiala (Officers) Service Regulations, 1979. It has been further stated that despite action being taken against the plaintiff under the minor penalty proceedings for his misconduct of remaining unauthorizedly from duty from 01.05.2006 till 31.03.2007, the plaintiff instead of reporting for his duties as Branch Manager, Patna Branch, continued to commit the same misconduct of unauthorized absence. It has been further stated that the same was duly pointed out to the plaintiff by the AGM-III vide letter dated 21.04.2007. It has been further stated that again, the plaintiff remained unauthorizedly absent from 01.04.2007 to 19.05.2007, which amounted to major misconduct. It has been further stated that a charge sheet dated 08.10.2007 was served upon the plaintiff and the Inquiry Officer after going through the entire

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record found the plaintiff guilty of the charge of unauthorized absence vide his findings dated 27.05.2008. It has been further stated that the plaintiff failed to prefer an appeal before the Appellate Authority against the orders dated 24.07.2008 and as such, the said orders become final and binding in between the parties to the present suit. It has been further stated that the plaintiff has been unauthorized absent from duty from 01.05.2006 till 20.05.2007 and as such, no work was done by him during the said period. It has been further stated that the plaintiff for his unauthorized absence is not entitled to any salary for the said period. It has been further stated that there is no provision for Medical Leave encashment as per the Rules and Regulations governing the service of the plaintiff. It has been further stated that applying the principle of "No Work No Pay" coupled with the fact that it had been proved in the Disciplinary proceedings that the plaintiff was unauthorizedly absent, the Competent Authority rejected the claim of the plaintiff for the said period vide letter dated 19.11.2008. It has been further stated that the present suit has not been valued properly for the purposes of court fees and jurisdiction. It has been further stated that this Court has no jurisdiction to entertain and try the present suit. It has been further stated that the decision of the Disciplinary Authority can be challenged by filing an appeal before the Chief General Manager, who is the Appellate Authority, but, no challenge has been done by the plaintiff to the orders dated 24.07.2008. Rest of the contents of the plaint have been denied and it has been prayed that the suit of the plaintiff be dismissed with costs.

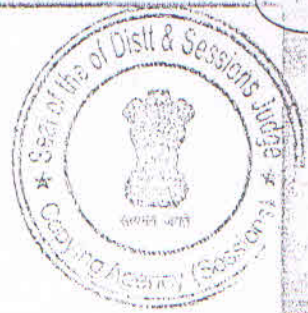
4. From the pleadings of the parties, the following issues were framed by my Ld. Predecessor vide orders dated 17.12.2009 :-

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- 1) Whether plaintiff has not come with clean hands or has concealed material facts from the court?OPD
- 2) Whether the plaintiff is entitled for decree of declaration as prayed for?OPP
- 3) Relief.

EVIDENCE :

5. The plaintiff has examined himself as PW1 and in his evidence by way of affidavit Ex. PW1/A as well as in additional affidavit Ex. PW1/AA on record, he has reiterated and reaffirmed the stand as taken by the plaintiff in the plaint. He has filed on record various speed postal receipts as Ex. PW1/1, medical certificates alongwith various leave applications from the period of 30.04.2006 to 18.05.2007 collectively as Ex. PW1/2, copy of the letter dated 17.06.2006 as Ex. PW1/3, copy of the letter dated 26.05.2006 as Ex. PW1/4, copy of the letter dated 31.03.2007 as Ex. PW1/5, copy of the letter to the Vigilance Department dated 12.04.2007 as Ex. PW1/6, copy of the impugned order dated 09.07.2007 as Ex. PW1/7, copy of the order dated 05.10.2007 as Ex. PW1/8, copy of the orders dated 27.05.2008 passed by Sh. A.S. Bhatia (Inquiry Officer) as Ex. PW1/9, copy of the letter dated 17.06.2008 as Ex. PW1/10, copy of the Tabular Review as Ex. PW1/11, copy of the acknowledgment as Ex. PW1/12, copy of the letter dated 21.02.2007 as Ex. PW1/13, copy of the letter dated 19.11.2008 as Ex. PW1/14, copy of the letter dated 24.07.2008 as Ex. PW1/15, copy of the letter dated 17.07.2007 as Ex. PW1/16, copy of the legal notice dated

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21.05.2009 as Ex. PW1/17 and reply dated 30.08.2009 as Ex. PW1/18.

6. In the cross-examination, PW1 states that he is hale and hearty except back pain. PW1 further states that in the year 2006-07, he was not able to sit due to back pain. PW1 further states that he developed this problem in March 2006 and he contacted doctor in this regard in April 2006. PW1 admits it to be correct that he had received letter sent by AGM-3 dated 13.05.2006. PW1 further states that he approached CMO for his examination, but, Administrative Officer of the said CMO referred the plaintiff to Senior Orthopaedician. PW1 admits it to be correct that his application was rejected by AGM-3. PW1 admits it to be correct that there was a publication in this regard in Daily Hindustan Times dated 28.05.2006. PW1 admits it to be correct that he could not join his duties within one week from the date of publication. PW1 admits it to be correct that the letter dated 17.06.2006 sent by AGM-3 was received by him. By way of volunteer, PW1 states that he sent reply to that notice. PW1 admits it to be correct that he received statement of imputation dated 29.08.2006 sent by the defendant. PW1 admits it to be correct that he received a letter sent by GM Operation (Disciplinary Authority) dated 31.03.2007 whereby his absence was treated as unauthorized absence. PW1 admits it to be correct that the appeal was filed by him and the same was disposed off vide orders dated 05.10.2007. By way of volunteer, PW1 states that whenever he recovered from the said pain, he joined his duties at Patna. PW1 denies the suggestion that he has violated rules and regulations of the defendant. PW1 admits it to be correct that a charge-sheet was filed against him. PW1 denies the suggestion that the proper inquiry was held after that charge sheet. By

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way of volunteer, PW1 states that the second time proper inquiry was held after joining duties by him. PW1 admits it to be correct that he did not join his duties in between 01.05.2006 till 20.05.2007. By way of volunteer, PW1 states that he was ill during the said period. PW1 admits it to be correct that the applications and medical certificates filed by him were rejected. PW1 denies the suggestion that as per the regulations of the defendant bank, he was not entitled for any leave encashment.

7. In the next cross-examination done on 20.08.2014, PW1 has placed on record the originals of Ex. PW1/2. PW1 denies the suggestion that the medical certificates Ex. PW1/2 collectively on record have been forged and fabricated by him in collusion with the doctors. PW1 further states that he had received the reply dated 21.02.2007 sent by the State Bank of Patiala to him to his leave application and the said reply was exhibited as Ex. PW1/P1 during the cross-examination of PW1. PW1 further states that he had received the reply dated 17.06.2007 sent by the defendant bank to him to his leave application and the said reply was exhibited as Ex. PW1/P2 during his cross-examination. Reply dated 08.10.2007 was exhibited as Ex. PW1/P3, reply dated 31.03.2007 was exhibited as Ex. PW1/P4, reply dated 26.05.2006 was exhibited as Ex. PW1/P5, reply dated 11.07.2007 was exhibited as Ex. PW1/P6, reply dated 17.06.2008 was exhibited as Ex. PW1/P7 during the cross-examination of PW1. PW1 admits it to be correct that his leave applications were not sanctioned and he was intimated about the same. PW1 admits it to be correct that the bank asked him not to make any further request/ representation for leaves as the bank had already informed him that his leaves were not being sanctioned. By way of

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volunteer, PW1 states that his leaves were purposely not sanctioned so as to harass him. By way of volunteer, PW1 states that he had filed his application for review to the higher authority i.e. Managing Director, who after considering his representation changed his punishment to censure and nowhere mentioned about withholding his salary. PW1 further states that in Ex. PW1/P3, the Managing Director had not accepted his plea of bed rest. By way of volunteer, PW1 states that the Reviewing Authority accepted his plea of sickness and also accepted medical prescriptions where bed rest was prescribed. PW1 admits it to be correct that nowhere in the order of censure, a recommendation has been made to release the pay of the plaintiff.

8. The plaintiff has further examined Sh. Ramapati Singh, who was posted as CTO with the defendant bank at Patna Branch of the defendant bank at the relevant time as PW2 and in his evidence by way of affidavit Ex. PW2/A, this witness has stated that he used to bring the plaintiff from his house to the branch and he helped the plaintiff to climb the stairs of the branch which he found too difficult to climb the stairs. This witness has further stated in his evidence by way of affidavit that the plaintiff joined Patna branch on 21.05.2007. This witness has further stated that while going back from branch, he used to help the plaintiff in reaching home. This witness has further stated that he has seen the plaintiff frequently taking pain killers. This witness has further stated that treating the period from 01.05.2006 to 20.05.2007 as unauthorized absence by the defendant bank was illegal, arbitrary and unjustified.

9. In the cross-examination, PW2 states that he knows the plaintiff since 2007. PW2 further states that as per his knowledge, Sh.

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F.C. Sharma suffered back pain after about two days of his joining Patna branch. PW2 further states that he has no knowledge that Sh. F.C. Sharma consulted CMO Delhi for his back pain. PW2 further states that he has no knowledge when the plaintiff was relieved from Bali Nagar branch. PW2 further states that he has no knowledge of any doctor, who has examined Sh. F.C. Sharma at Patna. PW2 has shown his ignorance about the treatment period from 01.05.2006 to 20.05.2007.



10. The defendant bank has examined Sh. Deep Chand Gupta as DW1 and in his evidence by way of affidavit Ex. DW1/A on record, he has reiterated and reaffirmed the stand as taken by the defendant in the written statement. This witness has filed on record his affidavit as Ex. DW1/A, the letters dated 13.05.2006, 22.04.2006, 26.05.2006, 17.06.2006, 23.06.2006 and 28.06.2006 as Ex. DW1/1 to Ex. DW1/6, copy of the invoice dated 27.05.2006 and copy of the newspaper notice published on 28.05.2006 as Ex. DW1/7 to Ex. DW1/8, letter dated 31.03.2007 and the orders of the Disciplinary Authority dated 31.03.2007 as Ex. DW1/9 to Ex. DW1/10, letter dated 21.04.2007 as Ex. DW1/11, postal receipt related to the letter dated 21.04.2007 as Ex. DW1/12 and the reply of the legal notice dated 21.04.2007 as Ex. DW1/13.

11. In the cross-examination, DW1 has stated that he cannot say that the plaintiff was not well during the period from 01.05.2006 to 20.05.2007. DW1 has further stated that he has no personal knowledge about the ill health of the plaintiff during the said period. DW1 has further stated that no inquiry was conducted by the defendant bank about the absence of the plaintiff during the period from 01.05.2006 to 31.03.2007. DW1 has further stated that so far as he thinks, only minor

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penalty was imposed upon the plaintiff. DW1 has further stated, that without going through the record, he cannot say that the plaintiff had sent presentations/ applications about his absence from duty. DW1 has admitted it to be correct that he was presenting officer on behalf of the defendant in departmental inquiry conducted against the plaintiff. DW1 has admitted it to be correct that the plaintiff sent his medical certificates to the defendant. DW1 has further stated that without going through the record, he cannot say as to whether in those medical certificates, the plaintiff was advised bed rest by the doctor. DW1 has admitted it to be correct that the orders of the Disciplinary Authority and the Appellate Authority were modified by Reviewing Authority i.e. by the Managing Director of the defendant bank. DW1 has further stated that without going through the record, he cannot say that the plaintiff had filed an appeal before Reviewing Authority about whole period of absence from duty or that the latter authority had considered said entire period of his absence before passing the orders.

12. In the next cross-examination done on 09.08.2010, DW1 has admitted it to be correct that for imposition of major penalty, department inquiry is a necessity. DW1 has further admitted it to be correct that no DE was conducted during 01.05.2006 to 31.03.2007 against the plaintiff. DW1 has further stated that in his opinion, penalty imposed upon the plaintiff was major penalty. DW1 has admitted it to be correct that when an employee of the bank goes on medical leave, as per rules, the bank is required to deposit costs with CMO concerned. DW1 has further stated that he does not know if in this case, any cost was deposited by the officer i.e. by the plaintiff or by the bank. DW1 has further stated that he

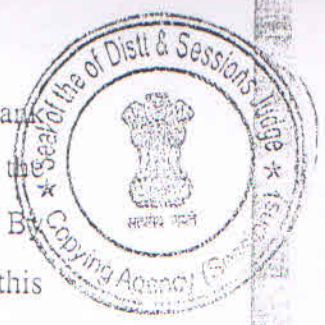
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does not know whether the plaintiff had already given a reply to the bank about the notice Ex. DW1/11. DW1 has denied the suggestion that the plaintiff had taken continuous leave from 01.05.2006 to 20.05.2007. By way of volunteer, DW1 has stated that he remained absent during this period. DW1 has further stated that he does not know whether any application seeking sick leave by the plaintiff was pending with the defendant bank during the said period. DW1 has further stated that he does not know whether no such order was passed against the plaintiff that he will not receive any salary. DW1 has further stated that without going through the record, he cannot say that the second inquiry was initiated against the plaintiff only after the orders passed by the Reviewing Authority. DW1 has admitted it to be correct that the plaintiff sent some representations during the period from 01.05.2006 to 18.05.2007, but, he does not know the details of the same. DW1 has further stated that he cannot tell whether doctor had advised bed rest to the plaintiff during the said period.



13. The defendant has further examined its Deputy Manager Sh. Suteekshan Mird as DW2 and in his evidence by way of affidavit Ex. DW2/A, he has reiterated and reaffirmed the stand as taken by the defendant in the written statement. He has relied upon the documents, which have already been exhibited in the evidence by way of affidavit of DW1. He has placed on record the notice dated 17.07.2010 alongwith its postal receipts as Ex. DW2/1 and Ex. DW2/2 and receipt of the courier collectively exhibited as Ex. DW2/3.

14. In the cross-examination, DW2 has admitted it to be correct that he has no personal knowledge about the said case as he joined

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defendant bank on 25.09.2007. DW2 has further stated that as per record, no inquiry was got conducted by the defendant about the illness of the plaintiff for the period from 01.05.2006 to 31.03.2007. DW2 has further admitted it to be correct that if an employee of the bank is on medical leave, the bank is required to deposit costs with CMO concerned. By way of volunteer, DW2 has stated that the officer/ official may also deposit the costs, which are compensated later on. DW2 has further admitted it to be correct that no such costs were deposited by the defendant bank. By way of volunteer, DW2 has stated that as the plaintiff was asked to get medically examined from CMO, but, he failed to present himself before CMO and as such, there was no question of deposition of any such costs. DW2 has further stated that he does not know that the plaintiff had approached CMO concerned, DW2 has further stated that he does not know whether the plaintiff had given any such representation to the defendant through registered letter with acknowledgment. DW2 has further stated that he does not know whether the plaintiff was on sick leave continuously for the period from 01.05.2006 to 20.05.2007. DW2 has admitted it to be correct that the plaintiff sent some representations during the said period, but, he does not know the details of the same. DW2 has further stated that he does not know whether in medical certificates submitted by the plaintiff, the doctor concerned had advised him bed rest. DW2 has further stated that he does not know whether any such order has been passed in the Departmental Enquiry that the plaintiff will not be entitled for the salary from 01.05.2006 to 20.05.2007. DW2 has further stated that on both the occasions, only the penalty of censure was imposed upon the plaintiff.

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DW2 has further stated that he does not know whether the plaintiff had sick leave about one year to his credit at that time.



15. The defendant bank has further examined Sh. C.S. Toppo, its Manager as DW3 and in his evidence by way of affidavit Ex. D3 on record, he has reiterated and reaffirmed the stand as taken by the defendant bank in the written statement.

16. In the cross-examination, DW3 has admitted that the plaintiff was on medical/ sick leave from 01.05.2006 to 20.05.2007. DW3 has admitted it to be correct that the bank was aware about the fact of the illness of the plaintiff from 01.05.2006 to 20.05.2007. By way of volunteer, DW3 has stated that the plaintiff failed to submit any authorized medical certificate. After going through the entire record, DW3 is unable to find any document pertaining to the period of 01.05.2006 to 31.03.2007 in respect of the inquiry of the plaintiff. By way of volunteer, DW3 has stated that the enquiry was conducted for the said period afterwards. DW3 has further stated that the document Ex. PW1/P7 was the document to show that the said enquiry was for the period from 01.05.2006 to 31.03.2007. DW3 has further stated that Ex DW1/9 was issued prior to the holding of the enquiry and the enquiry was held later on. DW3 has admitted it to be correct that the orders dated 31.03.2007 were challenged before the Appellate Authority and the Appellate Authority had decided the matter on 09.07.2007. DW3 has further stated that he does not remember as to whether even till 09.07.2007, no enquiry was conducted. DW3 has admitted it to be correct that the orders dated 09.07.2007 were also challenged before the Reviewing Authority and vide orders dated 05.10.2007, the Reviewing

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Authority had set aside the orders dated 31.03.2007 and 09.07.2007. DW3 has further admitted it to be correct that before the Reviewing Authority, the period of absence was w.e.f. 01.05.2006 till 20.05.2007. DW3 has further stated that he cannot admit or deny as to whether the letter dated 21.06.2006 was received by the bank or not and the said letter dated 21.06.2006 was marked as Mark X during the cross-examination of this witness. DW3 has admitted it to be correct that during the period of absence w.e.f. 01.05.2006 till 20.05.2007, the plaintiff was writing letters to the bank for medical leave. DW3 has admitted it to be correct that the letters which have been collectively exhibited as Ex. PW1/2 were received by the defendant bank. DW3 has further stated that only one enquiry was conducted by the bank with regard to the absence of the plaintiff. DW3 has admitted it to be correct that as per the record, sick leaves of the plaintiff were due to the tune of 340 approximately. DW3 has further admitted it to be correct that the Censure was issued to the plaintiff by the Reviewing Authority, but, no orders were passed by the Reviewing Authority directing the defendant bank to release the salary of the plaintiff.

17. I have carefully gone through the entire material available on record and heard the rival submissions of Ld. counsels for both the parties.

18. My issuewise finding on the abovesaid issues is as under:

Issues No. 1 & 2 :

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19. Both these issues are taken up together as the same are connected interse and overlap each other. Issues no. 1 pertains to the plea of the defendant as contained in the written statement of the defendant and as such, the onus to prove issue no. 1 has been placed upon the defendant. Issue no. 2 pertains to the prayer clause of the present suit and as such, the onus to prove issue no. 2 has been placed upon the plaintiff.

20. The factual matrix, which is within a narrow compass in the present suit, has already been narrated hereinabove. The material aspects of the testimony of PWs and that of DWs as well have also been narrated hereinabove. Certain facts are not in dispute. It is not in dispute that the plaintiff joined the services of the defendant bank on 04.05.1970. It is not in dispute that the plaintiff was transferred from Bali Nagar, New Delhi branch to Patna branch of the defendant bank and he was relieved on 22.04.2006 from Bali Nagar, New Delhi branch of the defendant bank and he had to join his duties at Patna branch of the defendant bank on 01.05.2006 after availing the joining time of one week. It is not in dispute that the plaintiff failed to join his duties w.e.f. 01.05.2006 till 20.05.2007 and he joined his duties on 21.05.2007 at Patna branch of the defendant bank. It is not in dispute that on the aspect of the absence of the plaintiff, the Disciplinary Authority of the defendant bank, vide orders dated 31.03.2007 imposed the penalty of reduction of his basic pay by one stage for a period of one year, treating the sick leave of the plaintiff as unauthorized absence. The said orders dated 31.03.2007 in the form of Ex. PW1/5 are there on record. It is not in dispute that the plaintiff herein preferred an appeal against the orders dated 31.03.2007

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before the Appellate Authority of the defendant bank and by virtue of the orders dated 09.07.2007 Ex. PW1/7 on record, the Appellate Authority of the defendant bank rejected the appeal of the plaintiff and upheld the orders dated 31.03.2007. It is not in dispute that the orders dated 31.03.2007 and 09.07.2007 were challenged by the plaintiff before the Reviewing Authority of the defendant bank and by virtue of the orders dated 05.10.2007 Ex. PW1/8 on record, the Reviewing Authority modified the said orders dated 31.03.2007 and 09.07.2007. By virtue of the orders dated 05.10.2007, the Reviewing Authority converted the major penalty of the reduction of the basic pay of the plaintiff by one stage for a period of one year to minor penalty of 'Censure' against the unauthorized absence of the plaintiff. It is not in dispute that thereafter, inquiry proceedings were held by Sh. A.S. Bhatia and he submitted his findings on 27.05.2008. The inquiry report submitted by Sh. A.S. Bhatia is there on record in the form of Ex. PW1/9, which covers the period from 01.04.2007 to 09.05.2007. It is not in dispute that the defendant bank failed to release the salary of the plaintiff w.e.f. 01.05.2006 to 20.05.2006.



21. The plaintiff has come to the Court on the ground that the alleged inquiry conducted by the defendant bank was improper, illegal, void and ab-initio. It has been further stated that the orders dated 17.11.2008 passed by AGM I(B) and GMO orders dated 11.11.2008 are also arbitrary, illegal and unjustified.

22. The defendant, on the other hand, has taken the stand that the plaintiff violated the rules and regulations of the defendant bank. The defendant has further taken the stand that the plaintiff remained

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unauthorizedly absent w.e.f. 01.05.2006 to 20.05.2007 and despite the repeated letters written by the defendant bank to the plaintiff, the plaintiff failed to join his duties at the Patna branch of the defendant bank. The defendant has further taken the stand that applying the principle of "No Work No Pay" withholding of the salary of the plaintiff for the period from 01.05.2006 to 20.05.2007 is just and proper.

23. As such, the vital question to be considered by this Court is as to whether the subsequent inquiry by the Inquiry Officer Sh. A.S. Bhatia and the findings recorded by Sh. A.S. Bhatia in the inquiry report dated 27.05.2008 are bad, improper, violative and against the principles of natural justice. This Court has to further consider and see as to whether the defendant bank is justified in withholding the salary of the plaintiff for the period from 01.05.2006 to 20.05.2007. This Court has to further consider and see as to whether despite the imposition of the minor penalty of censure, the defendant bank is justified in withholding the salary for the abovesaid period of the plaintiff or not.

24. The defendant bank has taken the stand that the plaintiff failed to submit the medical certificates by authorized doctors i.e. from the Govt. hospitals and the plaintiff also failed to present himself for examination before the Chief Medical Officer of Ram Manohar Lohia Hospital. The defendant has further taken the stand that since, the authorized medical certificates were not filed by the plaintiff, the alleged sick leaves of the plaintiff were treated as unauthorized absence.

25. PW1, in the cross-examination, has admitted that he received the letter dated 13.05.2006 sent by AGM-3 of the defendant bank. But, PW1 has stuck to the point that he approached CMO for his

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examination, but, Administrative Officer of the said CMO referred him to Senior Orthopaedician. PW1 has admitted the letter dated 17.06.2006 sent by AGM-3. PW1 has admitted the receipt of the imputation dated 29.08.2006. In fact, the entire correspondence is not only admitted by PW1, but, by DWs as well.

26. It has to be seen that DW1, in the cross-examination, has admitted that the plaintiff had sent medical certificates to the defendant bank. DW2 as well has admitted that the plaintiff had sent some presentations for the period from 01.05.2006 to 20.05.2007 to the defendant bank. DW3 has admitted in clearcut and unequivocal terms that the defendant bank was aware about the fact of the illness of the plaintiff from 01.05.2006 till 20.05.2007. DW3 has taken the stand that the plaintiff failed to submit any authorized medical certificates.

27. It has to be seen that Ex. PW1/2 are the medical prescriptions/ medical certificates placed on record by PW1, which were sent by the plaintiff to the defendant bank during the period from 01.05.2006 to 20.05.2007. DW3, in clearcut and unequivocal terms, has admitted the receipt of the letters Ex. PW1/2 collectively on record by the defendant bank. DW1 and DW2 as well, in their cross-examination, have admitted the receipt of the abovesaid letters by the defendant bank. A perusal of Ex. PW1/2 reveals that the said certificates/ medical certificates are either from Safdarjang Hospital, New Delhi or from Lok Nayal Hospital, New Delhi or from Ram Manohar Lohia Hospital, New Delhi. Most of the medical certificates/ medical prescriptions are from Ram Manohar Lohia Hospital and Safdarjang Hospital. Both the said hospitals are the Government hospitals. In most of the medical

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certificates, the plaintiff has been advised bed rest. The receipt of Ex. PW1/2 categorically stand admitted by DW3 and by the rest of the DWs as well. From the cross-examination of DWs, it is culled out that the defendant bank was also required to deposit the fees with the CMO, but, in the case in hand, fees were not deposited by the defendant bank.

28. All the DWs have categorically admitted that no inquiry was conducted with regard to the alleged unauthorized absence of the plaintiff from 01.05.2006 to 31.03.2007. The inquiry was conducted only for the period from 01.04.2007 to 19.05.2007. There is no explanation coming forward on behalf of the defendant bank as to why the inquiry was conducted only for the period from 01.04.2007 to 19.05.2007 and not from 01.05.2006 to 31.03.2007. The penalty of censure was imposed upon the plaintiff without holding any inquiry for the period from 01.05.2006 to 31.03.2007.

29. In this regard, it has to be seen that DW1 has categorically admitted that for imposition of the major penalty, departmental enquiry is a must. DW1 has admitted it to be correct that no departmental enquiry was conducted for the period from 01.05.2006 to 31.03.2007. Needless to mention that vide orders dated 31.03.2007 Ex. PW1/5 on record, the Disciplinary Authority had imposed the major penalty upon the plaintiff. Even the subsequent appeal to the Appellate Authority, which was preferred by the plaintiff was dismissed by the Appellate Authority vide orders dated 09.07.2007 Ex. PW1/7 on record. Only the Reviewing Authority of the defendant bank had modified the punishment and reduced the major penalty to minor penalty of censure.

30. The settled law is that no one can be vexed twice over the

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same cause of action. I am of the opinion that the defendant bank has utterly failed to explain as to why the salary of the plaintiff was withheld from 01.05.2006 to 20.05.2007 despite the fact that the penalty of censure was imposed upon the plaintiff

31. All the three DWs have categorically admitted that no inquiry was conducted for the period from 01.05.2006 to 31.03.2007. As such, I am of the opinion that the imposition of the major penalty by the Disciplinary Authority and imposition of the minor penalty of censure by the Reviewing Authority is against the principles of natural justice. I am also of the opinion that the subsequent inquiry covering the period from 01.04.2007 to 19.05.2007 is also vitiated because as per the own admission of DW3, the period of absence of the plaintiff was from 01.05.2006 to 20.05.2007 before the Reviewing Authority.

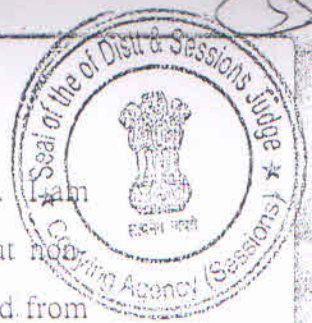
32. This Court cannot loose sight of the fact that all the three DWs have not denied that the plaintiff was not sick from 01.05.2006 to 20.05.2007. All the three DWs, in the considered opinion of this Court, have given evasive reply on this aspect of the matter. It is not in dispute that the Reviewing Authority did not pass any order either of the withholding of the salary of the plaintiff or of the release of the salary of the plaintiff despite the fact that there was a prayer on behalf of the plaintiff before the Reviewing Authority for release of his salary for the period from 01.05.2006 to 20.05.2007.

33. In the light of the abovesaid discussion, I have no hesitation to hold that the defendant bank has utterly failed to prove that the plaintiff has not come to the Court with clean hands or that the plaintiff has concealed the material facts from this Court. Issue no. 1 is, thus,

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decided in favour of the plaintiff and against the defendant bank. I am also of the opinion that the plaintiff has been able to prove that non-releasing of the amount of the salary of the plaintiff for the period from 01.05.2006 to 20.05.2007 by the defendant bank is illegal and unjustified.

34. The plaintiff has also prayed that non-releasing of the amount of payment for the pending sick leaves of about 350 days is illegal and unjustified. On this aspect of the matter, it has to be seen that admittedly, the plaintiff has sick leaves to his credit of 340 days, but, I am of the opinion that the plaintiff has not been able to prove on record that as per the rules and regulations of the defendant bank governing the service conditions of the plaintiff, the plaintiff is entitled for the release of the amount of the payment pertaining to pending sick leaves. To my mind, the plaintiff has been able to prove that the inquiry conducted against the plaintiff is illegal, unjustified and against the Principles of Natural Justice. I am of the opinion that the plaintiff is entitled for the salary covering the period from 01.05.2006 to 20.05.2006, but, in the circumstances of the present suit, I do not deem it fit to grant any interest on the abovesaid amount to the plaintiff. To my mind, the plaintiff has also not been able to prove that he is entitled for the amount of Rs. 50,000/- as the compensation for the harassment suffered by the plaintiff or to the amount of Rs. 15,000/- as litigation charges. Issue no. 2 is decided accordingly in favour of the plaintiff.

Relief :

35. In the light of my findings on the foregoing issues, the inquiry conducted against the plaintiff is hereby declared as illegal, void

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and against the principles of natural justice. The plaintiff is also held entitled for the salary for the period from 01.05.2006 to 20.05.2007. The defendant bank is directed to release the salary of the plaintiff for the said period within one month from the date of passing of this judgment and decree failing which the plaintiff shall be entitled to the interest @ 9% per annum on the decretal amount till the date of the realization of the decretal amount. The rest of the prayers of the plaintiff as contained in the plaint are hereby declined. The parties are left to bear their own costs.

Decree sheet be prepared accordingly by the Reader.

File be consigned to Record Room after due compliance.

Announced in the open court
on this 30th day of March 2016.

(RAJKUMAR)
ADJ-09 (Central)
Tis Hazari Courts, Delhi.

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