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Editorial

STUDY AND STRUGGLE!

The senior leadership of the AIBOC will attend a workshop in New Delhi being organized by Global Labour University, to enhance their ideological skills in order to address the challenges facing the labour movement and bank employees. The editorial board has decided to focus on the connection between 'Study and Struggle', coinage by a significant contributor to the democratic mass movement.

We strongly believe that understanding the present requires acknowledging the past. Civilization is a dynamic and continuous flow of events that presents new challenges and solutions over time. We want to highlight the challenges faced when there were no transparent transfer/posting policy, promotion policy, codified workflow module, proper leave sanctioning system, and other outdated industrial policies affecting the dignity of bank officers. AIBOC aims to address these issues and improve the human resources system related to bank officers and supervisory cadre. The victory in this struggle was achieved through the sacrifice of our founders and militant action by the membership, marking the birth of our legacy.

The advancing technological progress in Artificial Intelligence will significantly impact the industry and trade union movement in the future. AI and trade unions have a complex relationship, with

key points to consider such as job retraining, workers' rights, collective bargaining, AI governance, and the future of work.

Trade Union Strategies for Addressing AI include emphasizing lifelong learning, encouraging worker participation in AI decision-making, developing AI-specific bargaining agreements, fostering collaboration between unions, employers, and governments, and supporting research on AI's impact on work.

Challenges and Opportunities include ensuring how AI benefits workers, addressing job and worker displacement, balancing technological progress with workers' rights.

Let us also have a look at the possible applications of AI in the banking industry in particular so that we may fine-tune our strategies for acclimatizing to the sweeping changes without any dilution of our legacy.

Applications:

1. **Customer Service:** Chatbots, Virtual Assistants
2. **Risk Management:** Credit scoring, Fraud detection
3. **Compliance:** Regulatory reporting, Anti-money laundering

A JUG FILLS DROP BY DROP

4. **Investment:** Portfolio management, Predictive analytics
5. **Operations:** Process automation, Document processing

Future Outlook:

1. Increased adoption of AI in banking
2. Integration of AI with IoT and blockchain
3. Greater emphasis on explainability and transparency
4. Development of AI-powered financial advisory services
5. Regulatory frameworks for AI in banking

We have provided an overview of the emerging challenges related to technological innovation and urge our membership to merge '*Study with*

Struggle'. We strongly feel that our young comrades will contribute to this ongoing changes and its likely real life impact, so that the Confederation is well prepared to mitigate all the challenges.

As we extend warm festival greetings for the upcoming Durga Puja, Dussehra, and Deepawali, we encourage our members to stay committed to our social responsibilities. Let us celebrate while remembering our social commitments and strive to become ideologically oriented warriors of the Confederation for the struggles of today and tomorrow. We also urge everyone to support the cause of 'Bank Bachao Desh Bachao'.

Let us celebrate without forgetting or diluting our social commitments.

March on comrades,
 # **NationAgainstPrivatisation**
 # **BankBachaoDeshBachao**

Article

HOW TO HANDLE A NET BANKING FRAUD — CASE STUDY

With more and more Digitalisation of banking transactions, the customers are frequently becoming victim of Cyber Crime. Detailed study of one such case and action point for its handling are given below:

CASE STUDY:

A customer of Bank of Baroda, who was on short visit to overseas territory, received an SMS that ₹20000/- has been debited to his account. Immediately he smelt the fraud and rushed to call the bank on toll free number given in SMS, for blocking further debits in the account. Unfortunately, the number was not accessible from

overseas territory, so he called at desk meant for NRI customer, who transferred the call to domestic desk which resulted in loss of few precious minutes. The bank officials blocked the account & all channel of communication after verifying the credentials of customer. During this credential verification process and blocking of account, the miscreants made four more transactions of ₹ 20000/- each. This resulted in unauthorised debit of ₹ One Lakh in less than 20 minutes.

In addition to the above steps, the customer also reported the fraud to base branch and filed an FIR as advised by the bank in less than 48 hours of happening of fraud.

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

MODUS OPERENDI

The cyber criminals hacked the Bank account, stolen the Login credentials. They also hacked the mail id to get the OTP which was delivered on both mail and mobile. The cyber criminals accessed the account from different global locations and perpetuated the fraud. All this happened in less than 18 hour of hacking. They took control of mail, used it to get OTP and then deleted the OTP on mail to misguide the actual customer. They transferred this amount of ₹One lakh to their different account maintained with Paytm (payment bank) in different locations and immediately consumed the stolen amount.

BANK DECISION:

As per customer request for restoring the unauthorized debit amount, the bank carried the investigation and denied the restoration of amount withdrawn fraudulently saying that "the Customers Credentials (that login id and Pwd) have been used. The OTP was delivered at registered mob and mail. The transaction was through after due verification of customer credentials. Therefore, there is no mistake on the part of bank. Hence the bank is not responsible for restoration of amount fraudulently withdrawn.

CUSTOMER ACTION

Dissatisfied by Bank's decision Customer approached the OMBUDSMAN for redressal of grievance.

BANKING OMBUDSMAN

The RBI/ Bank's policy is very clear that if the customer notifies the fraud to the bank within 72 hours and there is no fault on his part (not shared OTP/PWD/ID etc.) his liability is zero. Since the

bank denied the restoration of amount withdrawn fraudulently, the customer approached the banking ombudsman who issued the advisory to the bank for restoration of amount.

LEGAL POSITION

The Bank & RBI believes that providing protection to the customer against unauthorized electronic transactions. RBI ISSUED Guidelines VIDE notification no RBI-2017-18/15 DBR. No. Leg.BC:78:09.07.005/ 2017-17 dated 06.07.2017 in respect of Customer Protection- limiting Liability of customers in Unauthorized Electronic Banking Transactions.

ACTION POINT FOR CUSTOMER IN CASE HE BECOMES VICTIM OF FRAUD (BASED ON INTERNAL CIRCULAR OF BANK OF BARODA)

1. Immediately notify the incidence of fraud to the Bank of Baroda on toll free no 18002584455 (if customer is in India) or on +91 7949044100 (if customer is out of India).
2. Notify the cybercrime incidence on the telephone number 155260 (the Govt. Of India has operationalized this number and is available throughout India) for reporting financial cybercrimes.
3. The officials recording cybercrime will provide an acknowledgment number to complainant. The cybercrime reported as above is uploaded by police authorities on NCRP (National Crime Report Portal) under MHACIS on website www.cybercrime.gov.in
4. The complainant so registered can access

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

at the www.cybercrime.gov.in through acknowledgment no and customer is entitled to modify the complaint. He can upload the evidence of fraud, if any on the website.

5. Once the complaint is finally modified and submitted, the NCRP portal treat it as FIR and transfer the FIR to the concerned police authorities.

6. This website has been created by ministry of home affairs and all banks are on board round the clock to report any financial fraud in the Bank's.

7. Please register the complaint with SP-Cyber Crime in the city of the concerned state also. Their numbers can be searched on Google.

8. Keep the bank informed of all the steps taken by you.

9. Fully cooperate with the bank and carry out their all instructions in totality during investigation like filing of FIR etc.

10. If customer has not committed any mistake and notified the fraud to the bank within time lines given by RBI, we are sure that justice will prevail.

11. If necessary please approach Banking Ombudsman at address given below:

- a) On line complaint can be filed at <https://www.rbi.org.in/Scripts/Complaints.aspx>
- b) Complaint can be filed through mail at Centralized Receipt and Processing Centre (CRPC) to crpc@rbi.org.in

c) **BY POST:** CENTRALIZED RECEIPT AND PROCESSING CENTRE,
4TH FLOOR, RBI SECTOR 17,
CENTRAL VISTA -160017

Preventive vigilance

Internet Banking

- * Avoid using the pc of cybercafé while using internet banking. Use pc or laptop available at your home.
- * Do not open the unsolicited links received through e mails or what's app message for offers, prize, lottery, bonus, incentive of companies, festival bonanza etc.
- * Change login and password of internet banking and your e mail at regular intervals.
- * Download apps from verified source only and not through any links provided in mail or message.
- * Do not disclose the OTP received on mobile to anyone over phone.
- * OTP is always for making the payment and never for receiving the money.
- * Stop using various free websites for any purpose which is a good market place for cyber criminals.

Mobile Banking

- * Frequently change login pin
- * For overseas use the limit should be made nil if you are in domestic territory

* The lowest limit of ₹ 1000/5000/ per day can be fixed ATM cash withdrawal as well as on line usage can be set the limit for ATM usage

* You can enable/disable transaction channel for ATM /point of sale/online ecommerce

* You can turn on/ of ATM card usage

* Stop using free Apps / websites for

making payment as these are big target of fraud

* Please be careful that your mobile number can be targeted by cyber criminals because they can get account numbers which are linked to that mobile number.

* You may receive an SMS from bank that they have received a request to link you account with UPI, without any request from you. The bank is not in a position to explain how this SMS has gone to you.

We are sharing with the readers a quick comparative study between OPS, NPS, and recently announced UPS based on the information available at the time of going to the press. More detailed article/ circular will be shared later.

	OPS	NPS	UPS
Pension	50%+DA	The pension amount is not fixed since it is paid based on the return on investments made in market-linked instruments managed by professional fund managers	50%+DA
Contribution of Employee for Pension	No	Yes (10% of Basic + DA)	Yes (10% of Basic + DA)
Gratuity	Yes	Yes	Yes
Withdrawal of Commuted Corpus	Whole amount of GPF	Employees can withdraw 60% of the corpus upon retirement, which is tax-free and 40% invested in annuities for getting pension	Not mentioned
GPF	Yes	No	No
Inflation Indexation	Pension increases with the revision of DA twice a year	No	Pension increases with the revision of DA twice a year
Contributed Money	Can withdraw once in year	No	No
Lump Sum Payment	No	No	1/10 th of monthly emoluments (basic + DA) as on the date of superannuation for every completed 6 months service
VRS	Eligible for pension on the Date of VRS	Employee will get only 20% of Commuted Corpus and rest 80% will be invested in annuities for getting a pension	May be eligible for pension only after as on date of actual retirement
Minimum Pension	9000/- + DA	No	10000/- + DA after superannuation minimum 10 years of service (it is not mentioned about the minimum pension in case of Death before 10 months
Family pension in case of Death during service	60% of Basic or 30% of family pension	OPS to family till date of 60 years' service of deceased employee i.e., 50% of basic. After this 30% of family pension	30% of family pension

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

CIRCULARS

- 19 dated 27th August, 2024 : Reproduction of UFBU Circular No. UFBU/2024/7 dated 26.08.2024 regarding Bipartite Talks with IBA on residual issues
- 20 dated 13th September, 2024 : AIBOC extends its absolute support in solidarity with AIUBOF & AIUBEA on their agitation programme including one day stay out strike in Union Bank of India on 27.09.2024

JUDICIAL

[2020 (165) FLR 202]
(PUNJAB AND HARYANA HIGH COURT)
G.S.SANDHAWALIA, J.
C.W.P.No. 7961 of 2015
October 23, 2019
Between
KARAM SINGH
And
CENTRAL BANK OF INDIA and another

Payment of Gratuity act, 1972-Sections 4 (6) (i)(a)and 4(6)(i)(b) Central Bank of India Employees Gratuity fund rules, 1975-rule 12-Gratuity-Order of forfeiting gratuity of petitioner employee on termination of his service-Challenged-However, gratuity could be forfeited only on account of financial loss caused to bank-There was no criminal proceeding against employee-As such there was no justification for forfeiture of gratuity- As the misconduct had to be fully established-Hence, impugned order of forfeiture of gratuity is not sustainable and is quashed-Gratuity to be paid within two months with interest @ 8% [Para 18]

JUDGMENT

G.S.SANDHAWALIA,J.- Challenge in the present writ petition filed under article 226/227 of the Constitution of India is to the order dated 23.07.2014 (Annexure P-8)whereby the respondent-Bank has forfeited the gratuity under section 4 (6) (i) (a) and (b) of the Payment of Gratuity Act, 1972 (for short 1972 act)and rule 12 of the Central Bank of India Employees Gratuity Fund rules, 1975 (for short '1975 Rules').

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

It is the case of the respondent-Bank as per the order that show-cause notice had been served on 3.7.2014 (Annexure P-5) and the explanation had been called for and the petitioner had sought time vide letter dated 15.7.2014 (Annexure P-6). Therefore, on account of no objection the gratuity was forfeited.

2. Counsel for the petitioner has placed reliance upon the provisions of the above said 1972 Act to submit that the gratuity of an employee, whose service have been terminated for any act, willful omission or negligence causing any damage or loss could only be forfeited to the extent of the damage or loss so caused. It is submitted that the order as such does not fall within the ambit of a speaking order and, therefore, in the absence of the reasons, it is liable to be quashed. It is further the case of the Counsel for the petitioner that the petitioner was compulsorily retired and it has been held that compulsory retirement as such is not a termination and therefore his case would not fall within the ambit of the said provisions. Reliance has also been placed upon Rule 12 of the 1975 Rules which also provides forfeiture of gratuity where there is a case of termination and loss is quantified.

3. Counsel for the respondent-Bank on the other hand has vehemently argued that loans had been sanctioned and on account of the loss as such, the gratuity had been forfeited. It was mandatory on account of the official having misused the powers of the Bank and having recklessly financed loans while being a Branch Manager and having acted beyond his delegated powers to put the Bank to a financial loss.

4. It is not disputed that on 14.3.2014 the petitioner was compulsorily retired on account of various charges having been proved against him by the Inquiring Authority. A perusal of the punishment order as such would go on to show that on account of the charges being proved, the punishment was imposed. Though the reduction to lower scale had been proposed, but by giving consolidated punishment of compulsory

retirement under Regulation 4 (h) of Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976 (for short '1976 Regulations') final decision had been taken. The relevant part of the said order reads as under:-

"On the basis of record of inquiry written briefs of PO and Defence submissions of CSO and findings of Inquiring Authority, I hold this charge as Proved and award the following punishment:-

"Reduction to a lower stage in the time of pay by one stage for a period of one year and he will not earn any increments during the period of such reduction and the reduction will have the effect of postponing the future increment of his pay' under Regulation 4 (f) of Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976, as amended upto date.

In view of the charges proved their gravity charge wise punishment discussed above vis-à-vis submissions of CSO I award the following consolidated punishment to CSO:-

"COMPULSORY RETIREMENT" under Regulation 4 (h) of Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976, as amended upto date.

The punishment is ordered accordingly."

5. The petitioner, thereafter, filed an appeal which was dismissed on 27.01.2015 (Annexure P-4), by observing as under:-

"After going through the Inquiry records. I am of the opinion that punishment awarded by the Disciplinary Authority commensurate with the gravity of Charges proved against Shri Karam Singh/Appellant. Bank cannot afford such type of Acts on the part of Employees which are prejudicial to the interest to the Bank and ultimately affect the Bank's Business besides tarnishing the

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

image of the Bank. Hence the Appeal is devoid of any merit and my intervention is not warranted. Based on the above, I affirm the Orders of Disciplinary Authority and confirm the Punishment imposed by the Disciplinary Authority upon Shri Karam Singh, the Appellant.

Thus the appeal is disposed off and ordered accordingly.”

6. In the meantime, even before the appeal had been decided on 27.01.2015 (Annexure P-4) show cause notice dated 03.07.2014 (Annexure P-5) was issued for forfeiture on account of the irregularities committed by the petitioner which had resulted in financial loss. It is pertinent to notice that in the said notice there is no reference of any amount quantified regarding the alleged financial loss caused. The said notice reads as under:-

***“To Shri Karam Singh
H NO 1012, Block 11 Milap Nagar
Ambala City (Haryana) Pin Code- 132034***

Whereas on account of irregularities committed by you which also resulted in the financial loss to the Bank necessary disciplinary proceedings were initiated resulting in Compulsory Retirement of your services vide order dated ZO/HRD/DAD/2013-14/1098 dated 14-03-2014.

In accordance with section 4 (6) of Payment of Gratuity Act, 1972 read with Central Bank of India Employees’ Gratuity Fund Rules, 1975, the gratuity payable to you is liable to be forfeited.

In view of above, the Board contemplates to take action and thus your are hereby called upon to reply to the notice within a period of Three days from the date of receiving the notice failing which, it shall be construed that you don’t have any objection to forfeit the gratuity.”

7. Vide request letter dated 15.07.2014 (Annexure P-6), the petitioner had prayed for some time to give proper reply and it is alleged that vide letter dated 21.07.2014 (Annexure P-7) he had given the explanation as such to the amounts, as loan of the Bank was secured and the Bank have a cheque of each and every borrower and guarantor till the account is NPA. It is further submitted that on account of the compulsory retirement he had superannuated 30 months earlier and he had no means of sustenance and in the absence of any financial loss, it would amount to double punishment to him.

8. As noticed, thereafter, the order of forfeiture dated 23.07.2014 (Annexure P-8) had been passed without the same containing any reasons as such. The order reads as under:-

“In pursuant to your Compulsory Retirement from service, notice dated 03.07.2014 for forfeiture of gratuity was served upon you whereby explanation was called for as to why your gratuity shall not be forfeited you vide your letter dated 15.07.2014 seek one week time to give proper reply of above notice. Till date we have not received any reply from you. It construed that your don’t have any objection to forfeit the Gratuity.

Hence, Bank decides to forfeit your gratuity accordingly under section 4 (G) (aj/4 (6) (b) of Payment of Gratuity Act, 1972 and Rule 12 of Central Bank of India Employees Gratuity Fund Rules, 1975.”

9. A perusal of the above section would go on to show that the gratuity of an employee is liable to be forfeited on account of his service having been terminated and for the damage of loss caused to the employer and to the extent of the damage and loss caused. In the above neither any damage has been quantified and nor it had

been quantified in the inquiry report also.

10. The argument of the counsel for the Bank that an opportunity shall thus be granted to the petitioner and the matter should be remanded is not liable to be accepted, in view of the judgment of the Apex Court passed in 'Mohinder Singh Gill and another VS. Chief Election Commissioner, New Delhi and others', that the order should be speaking order and cannot be supplemented at a subsequent stage in the written statement. The reasons had to be given in the impugned order and the silence in the same could be presumed that the respondents have no financial loss. The relevant portion reads as under:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

11. The said view was followed by the Apex Court in 'Dipak Babaria v. State of Gujarat',

12. Reliance can also be placed upon the judgment of the Full Bench of this Court in 'UCO Bank and

others Vs. Anju Mathur', wherein similar issue came up for consideration as to whether the order of compulsory retirement would amount to termination and whether in the absence of any loss, the amount of gratuity could be forfeited. The Full Bench came to the conclusion that an order of compulsory retirement is of two types . Once the employee has become a deadwood and of no use and secondly after holding a regular inquiry the retirement is by way of punishment. Regulation 46 (1) (e) of the UCO Bank (Officers') Service Regulations, 1979 provides that every officer shall be eligible for gratuity on retirement, resignation or termination of service by way of punishment after completion of 10 years of service and was also subject matter of consideration.

13. It was, accordingly, held that the termination order by compulsory retirement by way of punishment would amount to termination as such. It was further held that when gratuity is to be forfeited wholly or partly, the misconduct is to be proved and the amount has to be quantified. Resultantly, it was held that the order forfeiting the gratuity did not need the legal requirements and had to be set aside. However, an opportunity as such was given to the petitioner to serve proper show cause notice indicating actual loss, since the same had not been done in the final order, though a figure had been mentioned, which is not a case herein. The relevant portion of the said judgment read as under:-

"12. Two aspects arise for consideration, namely, - (a) whether gratuity can be withheld/forfeited under Regulation 46(1)(e) if the termination of service is by way of punishment of compulsory retirement; and (b) if it can be forfeited, then under what circumstances and whether it would be necessary to give proper hearing to the delinquent employee before forfeiting the gratuity.

13. Regulation 46 of the Officers' Regulations makes every officer eligible

for gratuity in certain circumstances which include retirement, death, disablement, resignation and termination. However, Clause(e) states that if the termination of service is occasioned by way of punishment, then the officer will not be entitled to gratuity. The Division Bench in Ashwani Kumar Sharma (supra) held that this clause cannot apply to the case of compulsory retirement. That is the only reason given, but without any elaboration. We are afraid, we cannot accept this to be a justified reason, as it leads to wrong interpretation of Clause (e) of Regulation 46 of the Officers' Regulations.

14. We would like to emphasise that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts to cessation of employment whereupon the employer-employee relation comes to an end. The purport of Regulation 46(1)(e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is occasioned by way of penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.

15. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To

that extent, the judgment of Division Bench in Ashwani Kumar Sharma (supra) does not lay down correct law and is hereby overruled.

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19. In the present case, admittedly, after inflicting the punishment of compulsory retirement upon the respondent herein, a specific show cause notice was given before taking the decision to forfeit her gratuity. Thus, an independent decision is taken fulfilling this procedural requirement which is mandatory as held in M/s Bharath Gold Mines Ltd. (supra). But the next question is as to whether it satisfies the tests on which judicial review of such an order can be undertaken.

20. We have already reproduced the language of show cause notice dated 18.9.2008. It states that the "respondent had committed certain irregularities and because of those acts, bank was exposed to serious financial risks." While forfeiting the gratuity, the reason given was that acts of the respondent "involved loss of more than ₹ 4.00 cr. for the bank." The contention of the learned counsel for the respondent was that in the show cause notice, no specific amount of alleged loss was quantified, which was mandatory requirement as per the judgment of the Bombay High Court in Smt.Kamla Rameshchandra Sharma (supra). Such a show cause notice was illegal as the loss had to be quantified. It was submitted that mention of this figure in the final order would be of no avail when the respondent was not given any opportunity to show cause against the same. Further, though the figure of ₹ 4 crores is mentioned in the final order, how this figure is arrived at is not disclosed by the competent authority. Learned counsel for the respondent also argued that no such figure was mentioned in the charge-sheet. Even in the enquiry report submitted by the Enquiry Officer where the charges

were proved, there was no finding of any loss which the appellant-Bank was exposed to because of the irregularities committed by the respondent in various accounts.

21. Learned counsel for the appellants, on the other hand, submitted that it was a case where irregularities were committed in various accounts by granting loans of different amounts which was clearly stated in the charge-sheet.

22. After considering these arguments, we find that argument of the learned counsel for the respondent has to prevail. We have gone through charge-sheet as well as enquiry report. No doubt, in the charge-sheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the charge-sheet or the enquiry report.

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause

notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of ₹ 4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside.

24. The upshot of the aforesaid discussion would be that though we disagree with the reasons given by the learned single Judge allowing the writ petition and also that Ashwani Kumar Sharma (supra) does not lay down correct law, insofar as present case is concerned, still the impugned order forfeiting the gratuity has to be set aside for the reasons given above. At the same time, since it is a procedural defect, liberty is given to the Bank to serve proper show cause notice indicating actual loss, if any, with particulars of the said loss and pass final orders after giving due opportunity of being heard to the respondent."

14. It is relevant also to reproduce Clause 12 of the 1975 Rules, which also provides that the financial loss as such in case of termination is the basis on which the forfeiture of the gratuity is to be to the extent of financial loss only. The said clause reads as under:-

"12. In case of termination of service of the member on account of proven misconduct, gratuity payable shall not be forfeited, except where such misconduct causes financial losses to the Bank and in that case the forfeiture of the gratuity shall be to the extent of the financial loss only"

15. It is also to be noticed that under 1976 Regulations though compulsory retirement is one of the major penalties under Clause (f) of the Regulation 4, but termination of service is provided under Clause (h).

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16. In such circumstances, the difference as such between the punishments is also apparent and the words used are 'termination of service' which is also a language of Section 4 of the 1972 Act. In such circumstances, the jurisdiction as of the respondent-Bank also to forfeit the gratuity on both accounts is lacking.

17. The Apex Court in 'Union of India & Ors. vs. CG Ajay Babu & Another', while noticing the provisions of the 1972 Act, came to conclusion that forfeiture of gratuity could only be on account of misconduct which had caused financial loss to the Bank in view of the bipartite settlement of the Bank. It was further held that there was no criminal proceedings as such filed against the employee and therefore it was held that there was no justification for the forfeiture of Gratuity as the misconduct of acts which involved moral turpitude had to be duly established in the Court of law.

18. Resultantly, the impugned order dated 23.07.2014 (Annexure P-8) is not sustainable and

the same is quashed. The respondent-Bank shall pay the amount of gratuity to the petitioner within a period of 2 months from the receipt of the certified copy of this order alongwith interest @ 8% per annum from the date of dismissal of the appeal i.e. 27.01.2015 (Annexure P-4).

19. Needless to say that relief for leave encashment had also been prayed for and it has only been released on 25.02.2019 (Annexure P-10) during the pendency of the case, as stated in the replication also. The respondent-Bank is also become liable to pay interest on the amount of leave encashment from the date of the dismissal of the appeal, as the relief of payment of same alongwith interest had been prayed for. In case the amount is not paid within the prescribed period of two months, the interest rate will go up to 10% per annum.

20. The writ petition stands allowed, accordingly.

Petition Allowed.

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