

***Officers' Cause***  
***May - 2019***



**Editorial**

## **DISCLOSURE OF INFORMATION BY RBI SUPREME COURT DIRECTIVES**

**I**n a landmark judgment the apex court of the country has directed the Reserve Bank of India that it is incumbent on the part of the Reserve Bank of India to furnish all the information sought by the people under RTI and no deviation can be allowed in this regard. One of the applicant by name Shri. Agarwal, approached the Reserve Bank of India for information about the Inspection Report of the Reserve Bank of India in respect of a bank and also the details of the fine imposed on various banks along with the details of the show cause notice served on them for certain lapses. The Reserve Bank of India took a plea that the information sought cannot be furnished since it is fiduciary in nature and the RBI is protected under the transparency law. The case when it came up before the Central Information Commission, the Commission has passed the order in favor of Shri. Agarwal and directed the Reserve Bank of India to provide the information sought under RTI Act. The Reserve Bank when refused to act on the direction of the Central Information Commission, the matter went to the Supreme Court when a contempt petition was filed by the applicant. The bench headed by justice I. Nageswara Rao, directed the RBI to review its policy to disclose information related to banks under RTI, observing that the RBI is "duty bound under the law to furnish the information sought by the applicant under RTI. While, the court did not proceed with the contempt, declared that " Any further violation

shall be viewed seriously" in this regard.

The Reserve Bank of India was maintaining all along that the Inspection Report prepared by them is confidential in nature and the details were even not shared on several occasions with the Board as well. Only a few directors which included the Professional Directors and the CEO of the bank use to have access to the same and the RBI use to always maintain that the report should not be shared with any one including the members of the Board without specific permission of the Reserve Bank of India as it used to be confidential in nature and RBI is protected from law from the disclosure of the same.

The RBI web-site contains the fines levied against the banks and it is available to the public. However, the details of the irregularities, the show cause served to them etc., will not be available and hence the petitioner was right in seeking these information. The depositors have a trust in the banks and place their hard earned deposits with the various banks on the basis of the advertisements issued by them. It is the duty of the Reserve Bank of India to protect the interest of the depositors and to provide all the information sought by them under RTI in the interest of their savings with the bank.

The Reserve Bank of India has a social responsibility to share the information sought

**NATION FIRST, ORGANISATION NEXT, INDIVIDUAL LAST**

by the public about the large scale defaulters and the loans and advances granted to the large scale borrowers since they are enjoying the savings of the masses kept in the banks. It is now the duty of the RBI to come out with comprehensive guidelines for furnishing the details sought by the public under RTI without taking recourse to the so called protection of privacy of the information or the information in the nature of fiduciary in nature.

The unions in the banking industry have been demanding the publication of the defaulters list and also stringent action against those borrowers who are avoiding the payment of the dues and have been resorting to leaving the country. It

has been continuous struggle by the Confederation demanding the stringent measures for the recovery of dues from the large scale advances since these borrowers are responsible for the difficulties of the Public Sector Banks since a long time. It is in this background, that the Supreme Court verdict has come very handy and hence the Confederation has raised these issues and demanded that the Reserve Bank of India as a regulatory of the banking system is now duty bound to provide the details of the NPA's and also the action initiated for the recovery of the same. It should also ensure that the bank loans are recovered in a stringent manner without any laxity on the part of the regulatory. ■

*Article*

## **JAN DHAN RECORDS ₹ 1 LAKH CRORE DEPOSITS PUBLIC SECTOR BANKS TAKE THE LEAD**

It is yet another feather in the cap of the Public Sector Banks which has taken up the task of campaigning for the opening of the Jan Dhan Accounts by the common people of the country at the instance of the Central Government over 3 years ago. The record shows that it is the sole achievement of the Public Sector Banks not only in garnering the deposits from this section of the society but also in reaching the record number of accounts- 35.50 crore accounts with a total deposit of ₹ 99,752 crores. The share of the Private Sector Banks is less than 3% of the total deposits amounting to ₹ 2,926/- crores.

The scheme was aimed at developing the habit of thrift amongst the lower income group particularly in rural areas. The Regional Rural Banks have made a stupendous success in this area garnering an amount of ₹ 17,648 crores.

It is interesting to note that the participation by women in Jan Dhan Account is more than 50% of the total account under Jan Dhan – about 21 crore predominantly from semi-urban and rural areas.

The growth of deposits has been phenomenal during the last three years which was boosted by demonetization in November 2016. Some of the special features that has been attracting the opening of the accounts under Jan Dhan includes the insurance cover, overdraft facility, etc., Above all, the renewed campaign amongst the Public Sector

Banks during the last one year has boosted the opening of new accounts as well as the increase in the deposits under Jan Dhan Account.

It is in this background, the expectation of the employees and officers working in the banking industry is that their requirement will be met by the Government in particular the reasonable improvements in the compensation system under the present bipartite negotiations. The Central Government employees as well as the other institutions owned by the Central Government are reaping rich benefits from time to time over and above what is provided under the 7th Pay Commission has now raised the hopes and aspirations of all our members across the country for a fair and equitable salary revision settlement under the 11th Bipartite Settlement. The improvements made in respect of the superannuation benefits to the Central Government employees, the Reserve Bank of India etc., have also raised hopes amongst the retirees that their long pending issues would be sorted out in the current bipartite negotiations.

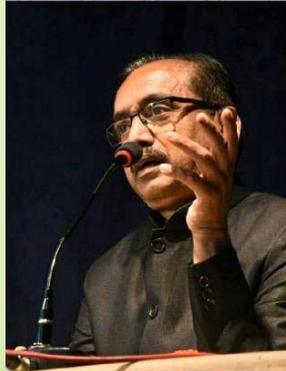
The Confederation has therefore initiated several moves to draw the attention of the Government as well as IBA on all the issues that are pending before the IBA including the sensitive issues of the retirees in the banking industry. ■

**SUCCESS AWAITS AT THE DOOR WHERE DILIGENCE IS**

*Retirement*

## FAREWELL TO COM. RAMKUMAR SABAPATHY, GENERAL SECRETARY, AISBOF -SR. VICE PRESIDENT, AIBOC

Com. Ramkumar Sabapathy, General Secretary, All India State Bank Officers' Federation (AISBOF) and Sr. Vice President, AIBOC has demitted office on attaining superannuation from bank's service on 30th April, 2019 after putting in more than three decades of illustrious service in the bank.



Born on 16th April 1959, he did post-graduation in commerce from Pune University. He started his journey in SBI on 28th July 1988 from a branch in Aurangabad. Prior to this, Com. Sabapathy sojourned almost seven years in a Government job. He excelled his prowess as a trade unionist in SBISU. He left indelible marks as an activist of Staff Union.

Com. Ramkumar Sabapathy was immediately spotted by senior functionaries of SBIOA (Mumbai Circle), who inducted him in the folds of the Officers' Association on his promotion in the officer's grade in the year 2004. There was no looking back for him as he immersed himself into the activities of SBIOA (Mumbai Circle). By dint of his abilities and stewardship, he was elevated in the organisational hierarchy and he did not return to his domicile at Pune and continued his activities in Mumbai, thus sacrificing his family life for the sake of his extended family. The very fact that he plunged into trade union activities from the day he started his career in State Bank of India and dominated the centre stage for more than three decades speaks volumes of his leadership qualities, commitment and acumen. He navigated SBIOA, Mumbai Circle to safe moorings after passing through turbulent periods.

His strategic thinking, strong leadership, respect for colleagues and great sense of humour are just a few reasons that he is an inspiration to all of us. Indeed, his exceptional qualities have inspired us in so many ways. He has put in great efforts in instilling values such as determination, tolerance, equity, patience, honesty and professional stewardship. His monumental contribution towards forward march of AISBOF is colossal. He is an embodiment of optimism, pragmatism and hard work. He is not only a brilliant and completely dedicated and committed leader, but also a great human being. He has brought

inspirational leadership to AISBOF. We were incredibly honoured and extremely privileged to have Com. Ramkumar Sabapathy at the helm of affairs.

As we look back to recapture his journey in SBIOA (Mumbai Circle) - Com. Sabapathy was elected as Chief Regional Secretary; Corporate Module, SBIOA (Mumbai Circle), in the year 2006. He steered the Association to make it most vibrant and dedicated himself to serve the members. There is not an iota of doubt that he possesses a rare combination of vision, fairness, and understanding-crucial qualities for a successful leader. Simplicity, straight forwardness, compassion, warmth and welcoming behaviour- he is an embodiment of all these good human qualities, which has endeared him to the membership. In all his assignments in the journey of trade union movement, he showed his professionalism of a true trade unionist, (who regards himself as a Trade Union 24 x7), collective bargaining, and superb negotiation skills which helped to unlock difficult situations so many times. His innate ability and vision have made AISBOF a leading edge in the industry. It is true that it takes a leader with great integrity, a spirit of eternal optimism, clear vision, humanity and respect for all others as well. Com. Sabapathy has done an absolutely incredible job in his short stint spanning just nine months and AISBOF is fortunate to have had his leadership. What he has done will have a legacy forever as evolving AISBOF to a new height and level.

Impressed by his organizing skills and empathy towards the common members, he was elected as Organizing Secretary in 2010. This was the most turbulent period in the history of officers' movement in SBI. However, Com. Sabapathy exhibited exemplary leadership qualities and was the main support to Com. Y.Sudarshan, the then General Secretary of the Federation, to steer the Federation out of its most turbulent times and was eventually elected as General Secretary of SBIOA, Mumbai Circle in the year 2013, a post he held till he relinquished it in March, 2019. The most glorious moment came in the month of June 2018 when he was elected unanimously as General Secretary of

**ARISE, AWAKE, STOP NOT TILL THE GOAL IS REACHED**

the Federation at the Triennial Conference in Chennai. Com. Ram's fourteen years of journey from a common member to the top position of the Federation is not only phenomenal but also inspires the members and office bearers with utmost devotion and dedication. He was the obvious and unanimous choice for the post of General Secretary, AISBOF leading more than 1,00,000 officers in State Bank Group. He exhibited rare qualities of an ardent campaigner, an ace negotiator when he brought a bonanza of benefits and other facilities for the officers working in State Bank. His valiant campaigns against the wrong economic policies of the Government, his struggle against Privatisation, Liberalisation, Globalisation of our financial institutions, will remain a golden chapter in the history of Banking Industry. He championed the cause of Public Sector throughout his career.

By his hard work, negotiating skills, oratory, amiable character, humbleness, modesty, unassuming nature which were infectious, he emerged as an icon during his life time. Many generations to come in the Banking Industry will remember, cherish the era of Com. Ram, who has left an indelible impression in the minds of innumerable officers and employees in the Banking Industry.

Wage  
He has proved his immaculate stewardship when Mumbai Circle Association, during his tenure as General Secretary of the Circle, conducted the Golden Jubilee of the Federation along with that of the Circle Association. The fabulous Golden Jubilee celebrations concluded with a grand and memorable Triennial General Council of the Federation in the year 2015 in Mumbai. Impressed with the leadership qualities of Com. Ram, the Federation nominated him for induction in Bank's board as an Officer Director. However, due to the indifferent policies of the Government, the vacancy is not filled till date. Unfortunately, the Bank missed a resourceful, unflustered and, diligent comrade to their topmost decision making body of the premier financial institution of the country.

Com. Sabapathy popularly known as members' General Secretary possesses an extraordinary passion and commitment and never believed in shortcuts or unholy compromises. He has always been a key person for the Federation at each and every negotiation. Words can neither qualify nor quantify how helpful his guidance and advice has been effective in unlocking many critical situations during his tenure in different assignments in his long journey

in the trade union horizon. His response to several critical issues that had cropped up in this period had been swift and prompt and he had not rested till they were taken to logical conclusions through his persuasive skills. We salute him for his vision, unmatched leadership, work ethic and especially his sense of humour and goodwill. His perceptiveness as a trade union leader transcended all boundaries and for him the path is endless. We have and will continue to value his leadership and tireless commitment to our trade union movement, his advice and his unending support.

Though Com. Ram got a very short tenure at the helm of the Federation, the work done by him during this period is just remarkable. He had hit the ground running from day one. He raised each and every issue and followed up vigorously for its resolution. He also fought unceasingly for implementation of Work Life Balance in letter and spirit. He conducted a Survey on Work Life Balance with the help of Mumbai Circle Association and shared the report highlighting the ground realities with the Management. The report and efforts were appreciated by the Management and the suggestions have been considered by the Management to address the issue.

He has been a very effective communicator and has made himself always available/accessible to the common members. Defending the disciplinary cases has been his core area of interest as the officers suffer most during this difficult time. He personally defended many critical cases and ensured that justice is done to members. As the Director of NATURE, more number of Disciplinary Proceedings Workshops were conducted to strengthen the disciplinary area. His acumen in respect of disciplinary cases and vast knowledge in banking space has undoubtedly left an indelible impact in protecting the members and bringing justice to them. We deeply respect his contribution and the values espoused by him while discharging his role as a trade union leader. We express our gratitude for all his support and guidance he extended while discharging his role in various assignments as a trade union leader he held with distinction.

Com. Ram effectively transformed the functioning of SBOA Public School at Nerul and Aurangabad which reached its pinnacle of reputation within a short time. Com. Sabapathy has been a front runner to contribute for the welfare of the society. It was

**WORK IS WORSHIP , DO YOUR DUTY**

only due to his initiative and sustained efforts, Mumbai Circle Association could make donations to various social organisations. His appeal for contribution to Army welfare fund was endorsed by the members wholeheartedly. During Triennial General Council held at Pune in the year 2017, the Association donated 2 e-carts to Artificial Limb Centre, Pune for movement of injured soldiers from one place to another. This is a trend setter in the history of officers' movement. We will be missing the reassuring presence, the infectious confidence and the resoluteness to encounter any situation with élan. But the inevitable moment has come and we bid you farewell only to be inspired, counselled to achieve the sublime and the noble ideals. We assure you

Comrade, the noble thoughts; sublime ideals cherished by you will be the lode stone to our hearts and lode star to our eyes.

Retirement marks the start of another chapter in one's life. This is another beginning of your life. We convey our best wishes on your retirement. We do hope that you would spend quality time with your family and friends. May every moment of your life be fulfilling and full of joy. You will be missed and remembered and revered. Working with you has been an immense pleasure. Your humility and graciousness have won our hearts. The mountains that you have moved and the legacy that you leave will be remembered for generations to come. ■

*Congratulations*

### **COM.SOUMYA DATTA TAKES OVER AS GENERAL SECRETARY OF THE FEDERATION**

We are happy to inform all our members that the Executive Committee of the All India State Bank Officers' Federation which met at Mumbai on 28th April 2019 unanimously decided to co-opt Com.Soumya Datta, as the General Secretary of the Federation with effect from 1st May 2019 in the vacancy caused due to the superannuation of Com.Ramkumar Sabapathy, the present General Secretary who will be retiring on the 30th April 2019, as per the rich tradition that has been established by the Federation since its inception that the serving members only should lead the organization. Com.Soumya Datta was unanimously elected as the President of the Federation in the General Council held at Chennai during June, 2018.



the industry. He has a long career as a militant leader in the banking industry serving in various capacities both in the Federation and the Confederation. Under his able leadership, we are all looking for an excellent salary revision. He has been relentlessly waging battles against the several initiatives of the Government which aims at handing over the Public Sector Banks to the multinationals and the private sector in the country. With his varied experience, grit and determination he should be able to carry forward this movement to a greater heights in the days to come.

2. Our members may also recollect that during the last General Council meeting the issue of the succession plan was elaborately discussed and certain understandings were reached as per the wishes of the General Council and the same is now being implemented in letter and spirit.

3. Com.Soumya Datta, who is presently holding the position of the General Secretary of the Confederation and also General Secretary, SBIOA, Bengal Circle will now take over as the General Secretary of the All India State Bank Officers' Federation which is the largest supervisory cadre organization in the banking industry responsible for taking care of the interest of the officers fraternity in

4. Com. Soumya Datta, was born on 27th November, 1962 at Kolkatta. After completion of B.A (Economics) L.L.B., MBA, he joined the State Bank of India as probationary officer on 02.02.1987. He rose to the post of General Secretary, SBIOA, Bengal Circle during the triennial period of 2012-2015. In the 27th Triennial Conference of AISBOF at Chennai, he was unanimously elected as President of AISBOF. He had participated in literary mission, environment awareness programme and acquired an excellent oratorical skill and won many prizes in debate competitions during his student days. He is instrumental in conducting numerous social activities throughout in the state of West Bengal and Sikkim.

5. On this happy occasion, we on behalf of the Federation convey our happiness over his

**LET CUSTOMER SERVICE BE OUR MOTTO**

succession as the General Secretary of the Federation and appeal to all our affiliates and members to continue to extend their full co-operation and support in his endeavor to carry forward the lofty ideals which the Federation has been carrying forward since its inception in the country. We will be failing in our duty if we do not place on record the unstinted co-operation and support extended by your beloved wife Mrs. Karpagam alias Mala and children, who bore the brunt of isolation, during your campaigns and struggles. But for their support you would not have reached the pinnacle of glory. We fervently believe that Com. Ram is just retiring from bank's

service on superannuation, and he is not quitting the battle field for the cause of the society in general and the members in particular. We will feel extremely privileged to have his guidance in the forward march of AISBOF.

We, in our individual capacity and on behalf of all the members of AISBOF convey our sincere appreciation for his significant contribution and urge upon him to continue his fight against injustice, for the cause of the common man and the members and extend his valuable guidance to the banking Trade unions. We wish him an active, healthy, contented and fulfilling life. ■

*Congratulations*

### **COM.SAMBIT MISHRA TAKES OVER AS PRESIDENT OF THE FEDERATION**

**W**e are happy to inform all our members that Com.Sambit Mishra, the Senior Vice President of the Federation and the General Secretary of Bhubaneswar Circle Association has been co-opted as the President of the Federation in the meeting of the Executive Committee of the All India State Bank of India Officers' Federation held at Mumbai on 28th April 2019, in the vacancy caused due to the Co-option of Com.Soumya Datta, as the General Secretary of the Federation



knowledge he was a natural choice for the post of the President of the Federation and hence the Executive Committee co-opted him unanimously.

Com. Sambit Mishra was born on 5.5.1960 at BanapurKhurda dist. Odisha. After completion of B.A (Hons.), joined the State Bank of India on 03.12.1984 as probationary officer. He rose to the post of General Secretary, SBIOA, Bhubaneswar Circle in

Sept. 2012.

Com.Sambit Mishra, who was holding the position of Senior Vice President of the Federation, is a veteran with a long experience in the trade union movement ever since he joined the bank in the Bhubaneswar Circle. He served the Circle Association in various capacities before taking over the position of the General Secretary of the Circle Association. With his rich experience and

We are confident that under his leadership as the President of the Federation, the future of the Federation is in the safe hands and he will continue to carry forward the rich legacy of this organization in scaling greater heights in the days to come. We take this opportunity on behalf of the Federation to extend our warm felicitation and wish him all success in his endeavor in the days to come. ■

### **MAY DAY SIGNIFIES THE STRUGGLE OF WORKING CLASS TIME TO RETHINK, REJUVENATE AND RESURGE!!**

**Text of AIBOC Circular No. 2019/28 dated 27th April, 2019**

The historic May Day is an occasion to recollect, remember, respect and commemorate the fight and struggles of the working class and people against the exploitation and onslaught on their rights. This day has brought a new dimension in the lives of

working class across the globe and realised the dream of "Dignity & Respect "of Working Class. The oppressed and subjugated working class, who were treated as bonded labour were made to toil for 10-14 hours a day, decided to revolt and retort. The sparks, undercurrents flowing here and there for years foregathered, ignited a colossal movement that changed the course of history on 1st May, 1886. We

**BE TRUTHFUL, BE FEARLESS**

are all are how the working class resorted to strike in Chicago, which was given the sobriquet "Haymarket Affair", demanding restriction of work to 8 Hours a Day, which left an indelible mark to introduce a "8 Hours a Day" norm and is befittingly observed as International Workers' Day.

2. Comrades, the attack on the working class was always there and continues even today. While the threat during yester years were mechanisation, oppression, suppression, gender bias, denial of reasonable wages, denial of minimum comfort required for a decent living, the situation is no different today. Today's working class is haunted with similar, but mutated and more serious threats. The demon of Artificial Intelligence, ill-thought out policies and programmes of Government and employers, squeezing of human resource in the garb of profit maximization, enslaving the work-force to work for unending hours, without weekly-offs, denial of Trade Union rights etc. In our banking industry too, officers are forced to work beyond reasonable hours, work on holidays, thus disconnecting from their social and family life. Recruitment has drastically curtailed resulting in increase of per capita workload and the officers are under severe stress and strain. Work life balance has been drastically shattered due to work pressure and stress at office culminating unexpected and untimely loss of lives. The officers' associations in many affiliates were formed nearly 50 years ago, when the officers were subjugated and tormented. The wheel seems to have turned a full circle. Remembering May Day becomes more relevant from this perspective. Today, there is a need to fight as the labour force did 133 years ago.

3. We, AIBOC, being the world's largest organisation of supervisory cadre, is alive to the issues. We remain resolute - To oppose atrocities perpetrated on the working class; To oppose privatisation; To oppose Mergers & Amalgamations; To oppose disowning the Public Sector Enterprises by Government; To ensure Work-Life-Balance; To ensure existence of Public Sector Undertakings in the interest of common man of the country.

4. Government has been attempting to consolidate existing 44 labour and related laws into 4 Codes i.e. Wages, Social Security, Industrial Relations and Occupational Safety, Health & Working Conditions. The need of balance is pro-capitalists, dilutes the stringency and allows easy-closure of establishments, encourages hire and fire policies. It is skewed in favour

of employers than the very employees who run them. Similarly, we have another challenge – protecting the interest of labour in unorganised sector, which is huge population in the nation. This is a vulnerable area, where illiterate, semi-literate, women and the deprived society of India are being squeezed. AIBOC, being the torch bearer in the working-class movement, trade union fraternity looks upon us to lead in ameliorating the hardship of our comrades in unorganised sector.

5. Banking industry continues to be on hazy path. This has a huge consequence on the welfare, the working environment of officers and the very existence of public sector banks. Corporates are waiting to take over the PSBs and old generation private banks; Government is pursuing a policy of annihilating trusted public sector banks; every attempt is being made to show PSBs in poor light with the hidden intention of privatising them, to handover to greedy corporates. Laws are being amended to make the illegal legal, to legitimise corporate loot of public money and national resources, expenditure on social welfare. The central government is pampering the national and multinational corporations and big houses with bonanzas-tax concessions, bank loan defaulters and exemptions from laws of the land including labour laws. The vast majority of workers and the peasants who produce wealth expending their sweat and blood are being pushed into slavery and penury; they are denuded of their lands, their jobs, their rights and their livelihoods. While Government is using PSBs for its advantage, it has not shown any inclination to recognise and accept our demands, be it wage revision, pension revision or to stop misplaced reforms.

6. On this occasion, to secure the interest of the working class in general and bank officers in particular, we strongly demand Government to initiate following pro-working-class measures.

a. Though India is one of the founder member of International Labor Organisation (ILO), it is embarrassing to note that our country is yet to ratify the Conventions which recognise trade union rights. We demand that Government should ratify ILO Conventions No.87 (Freedom of Association and Protection of the Right to Organise) and No.98 (Right to Organise and Collective Bargaining Convention) without further loss of time. It is worth to note that majority of

countries – developed, developing and underdeveloped have ratified, but not India, the largest democracy in the world.

- b. Another urgent necessity is a law restraining the employers from forcing its employees, irrespective of cadre, to work beyond stipulated hours. This will foster the social relationship and a healthy society.
- c. There is also a law needed to examine death of personnel from the perspective of “death due to over-working”, “burning out”. There is a law elsewhere in the world which provides for examining whether a death is on account of overworking. Ailments like Cardiac disease, stroke etc. are more often the consequences of stress and strain

obtaining in working environment. This sort of a penal action would not only be deterrence in exploitation of personnel, but will also lead to augmentation of human resources, resulting in creation of more and more required employment.

7. On this historical day, let us take a pledge, to be united and work for a better work environment. Let us espouse the cause of officers’ fraternity, of a common man, the farmer, and the less privileged society. Let us take every measure to guard the fabric of public sector banks and guard them jealously. We call upon all our Affiliates/ State Units to celebrate May Day befittingly to demonstrate that we are determined to hold the mantle and to protect the interest of human capital of the country as also the Nation.■

*Judicial Verdict*

[2019 (161) FLR 292]

(DELHI HIGH COURT)

SURESH KUMAR KAIT, J.

W.P.(C) No.439 of 2018 and C.M.Appln.No.1854 of 2018

February 13, 2019

Between

SURENDRA

And

SYNDICATE BANK

***Payment of Gratuity Act 1972-Section 7 (3-A), 4 and 4 (6) –Forfeiture of gratuity-Impugned order of Appellate Authority vide which Administrative Order of respondent-Bank forfeiting the gratuity of petitioner upheld-Challenged by petitioner employee-However, as the petitioner has not been prosecuted and loss caused to Bank not quantified-Even in charge there is no allegation of moral turpitude-Thus, the opinion of Disciplinary and Appellate Authority is contrary to law-Amount of gratuity therefore, cannot be forfeited and liable to be paid as determined by Controlling Authority with interest @ 10% -Hence impugned order is set aside-And order of Controlling Authority restored.***

[Para 17]

### JUDGMENT

SURESH KUMAR KAIT,J.-Vide the present petition, the petitioner seeks direction thereby setting aside impugned order dated 18.10.2017 of the Appellate Authority, constituted under the Payment of Gratuity Act, 1972, vide which Administrative order dated 05.03.2016 of respondent bank forfeiting the gratuity of the petitioner has been upheld. Further seeks direction thereby directing to restore order

dated 12.06.2017 of the Controlling Authority vide which the controlling Authority, constituted under the Payment of Gratuity Act, 1972, directed the respondent “to pay the applicant a sum of 10,00,000/- (Rupees Ten Lac) as gratuity along with simple interest @ 10% per annum on the said amount as per section 7 (3-A) of the Payment of Gratuity Act, 1972 from the date it became payable i.e. 12.10.2015 (date of compulsory retirement) till the date when it is actually paid to the applicant.”

**LET US BUILD A STRONG AND SELF RELIANT INDIA**

**Officers' Cause, May - 2019**

2. Counsel appearing on behalf of the petitioner submits that the petitioner had joined the respondent bank on 21.08.1982 and had worked in various branches/offices. He was compulsorily retired from the service on 12.10.2015. Till his compulsory retirement, he had put in 33 years and 2 months of continuous service without any break whatsoever. Hence, the petitioner had become eligible to receive full gratuity, as per the provisions of section 4 of the Payment of Gratuity Act, 1972.

3. However, the petitioner was served with charge sheet dated under the provisions of Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976. The respondent bank conducted an enquiry into the matter and the Disciplinary Authority vide its order dated 06.10.2015 imposed the punishment of compulsory retirement from the services of the bank with immediate effect.

4. It is further submitted that the petitioner was not alleged to have committed any offence, much less offence involving moral turpitude, either in the charge sheet or in the orders of the Disciplinary and Appellate Authorities. He was merely charged with misconduct on the basis of allegation of certain irregularities, as enlisted in the provisions of Regulations, 1976 mentioned above.

5. To strengthen of his arguments, has relied upon the case of Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others whereby the Hon'ble Supreme Court held as under:-

"10. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub- section (6) of Section 4 of the Act contains a non-obstante clause vis-a-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously

observed. Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant. Clause (b) of Sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied. Termination of services for any of the causes enumerated in Sub- section (6) of Section 4 of the Act, therefore, is imperative."

6. Counsel further submits that neither the Disciplinary nor the Appellant Authority has power to convict a person. The similar issue came before the Honble Supreme Court in the case of The Divisional Personnel Officer, Southern Railway and Ors. Vs. T.R. Chellappan and others whereby the Supreme Court held as under:-

"..... The words where any penalty is imposed in Rule 14(i) should actually be read as 'where any penalty is imposable', it because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent Court. Furthermore the Rule empowering the disciplinary authority to consider circumstances of the case and make such Orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word 'penalty' used in Rule 14 (i) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal Court.

10. Another important aspect of the matter is that a criminal Court after conviction does not impose any penalty but passes a sentence whether it is one of fine, or imprisonment or whipping or the like. The Penal Code has been on the statute book for a large number of years and the rule-making authority was fully aware of the significance of the words 'conviction' and 'sentence' and if it really intended to use the word 'penalty' as an equivalent for 'sentence', then it should have used the word 'sentence' and not 'penalty'....."

7. Learned counsel appearing on behalf of the petitioner submits that the respondent has not made any criminal complaint, thus, the petitioner has never been prosecuted by any court of law and question of conviction does not arise. It is submitted that no loss caused to the bank, therefore, the loss has not been quantified. The petitioner has been compulsorily retired after the departmental inquiry but allegation of moral turpitude has never been levelled against the petitioner nor proved in the said departmental inquiry. However, the impugned order dated 05.03.2016 passed by the disciplinary authority has been confirmed by the appellate authority vide its order dated 18.10.2017.

8. In the counter affidavit filed by the respondent, it is stated that the present petition is not maintainable as the appellate authority has passed the reasoned order and has rightly come to the conclusion that forfeiture of gratuity is in accordance with the provision of section 4 (6)(b)(ii) of the Act as the acts of misconduct proved against the petitioner amount to moral turpitude and has been punished by the disciplinary authority by way of disciplinary proceedings and prior conviction by criminal court is not mandated for invocation of section 4(6)(b)(ii) of the Act.

9. Learned counsel appearing on behalf of the respondent bank submitted that the petitioner was working as Branch Manager at Mainpuri Branch during the period between 03.11.2008 to 28.06.2011 and while working there, he sanctioned various credit facilities to certain parties without conducting due diligence such as not verifying the

CIBIL report, not obtaining confidential opinion from the existing bankers etc., without assessing the requirement properly and without obtaining the required details/documents and without conducting pre-sanction visits. The petitioner sanctioned/enhanced credit facilities to clear the overdues in other accounts of the parties and fresh loans have been sanctioned when the existing loans were overdue/irregular. He failed to conduct proper post sanction visit/follow up/monitoring. The petitioner in order to avoid slippage in the said quality, transferred amounts held in the untallied collection accounts to overdue/irregular loans and subsequently got credited the amount back by debiting to the parties account thereby temporarily misappropriated the amounts lying in the collection accounts. Accordingly, the petitioner in this process violated the guidelines of the bank and undue official favour was extended to the parties at the cost of the bank and the bank was exposed to the risk of financial loss to the extent of 139.97 lakh. Thus, the petitioner failed to take all possible steps at the time to ensure and protect the interest of the bank and discharge duty with utmost dignity, honesty and devotion and diligence and acted in a manner unbecoming of an officer employee and thereby contravened regulation No.3(1) and regulation No.24 of the Syndicate Bank Employees (Conduct) Regulations 1976.

10. He further submitted that conviction by a Trial Court and termination or dismissal of the services is not required to forfeit the gratuity. The same can be forfeited if the employee has committed an offence of moral turpitude as is in the present case. The case mentioned above of the petitioner is amount to moral turpitude.

11. To strengthen his argument, counsel for the respondent has relied upon a judgment of Himachal Pradesh High Court in the case of Madan Lal Sharma vs. H.P. Khadi and Village Industries Board wherein in para 20 of the said judgment, it is held that according to section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, the gratuity payable to an employee may be wholly or partially forfeited, if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such

**NEVER BEND BEFORE THE INSOLENT MIGHT**

offence is committed by him in the course of his employment. It is further observed that the expression "misconduct" covers a large area of human conduct. On the one hand, the habitual late attendance, habitual negligence and neglect of works: on the other hand, riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline, wilful insubordination or disobedience. Misconduct falling under several of these latter heads of misconduct may involve no direct loss or damage to the employer, but would render the functioning of the establishment impossible or extremely hazardous. Thus, learned counsel submits that in the present case, the case of the petitioner constitutes the offence of moral turpitude.

12. Counsel for the respondent has also relied upon the judgment of this Court in Food Corporation of India vs. UOI & others. in W.P.(C) 7350/2009 dated 03.08.2015 whereby it is held that the term „moral turpitude is somewhat vague by its very nature because it involves examination of an action in the light of the existing moral norms. Unlike legal norms, moral norms are somewhat unformulated. They can change from time to time, from society to society and even from individual to individual. Hence, it is quite possible that an action which may be violative of moral norms in one society may appear acceptable to another. One can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such action has taken place. Accordingly, held the gratuity was rightly forfeited.

13. I have heard the counsel for the parties.

14. In the case of Madan Lal Sharma (supra), the petitioner therein was terminated from the services which is one of the ingredients of section 4 mentioned above.

15. In the case of Food Corporation of India (supra), huge recovery of 1,90,000/- was recovered out of gratuity amount and remaining amount of 1,94,000/- was paid to the employee. However, in the present case, neither any recovery has been made from the

petitioner nor terminated from the services. Thus, the case relied upon by the respondent is not applicable in the facts and circumstances of this case.

16. Thus, the opinion of the appellate authority is contrary to as has been decided in case of Jaswant Singh Gill (supra) whereby it is held that the amount liable to be forfeited would be only to the extent of damage caused. In the case in hand, the disciplinary authority has not quantified the loss or damage. The provisions contained in sub-clause 6 of Section 4 mentioned above be scrupulously observed. Clause 6 of the section 4 speaks of termination of service of employee for any act. However, the gratuity amount liable to forfeit would be only to the extent of damage or loss caused. In addition, if employee is convicted for moral turpitude or terminated from service.

17. In the present case, admittedly, the petitioner has not been prosecuted by any of the criminal court which has power to convict or punish the accused. It is further admitted that no loss caused to the bank, therefore, not quantified. Even in the charge, there is no allegation of moral turpitude, thus, the opinion of the disciplinary authority and the appellate authority is contrary to the view taken by the Honble Supreme Court in case of Jaswant Singh Gill (supra) and T R Chellappan (supra).

18. In view of the above discussion and the settled law, I hereby set aside the impugned order dated 18.10.2017 of the appellate authority vide which the administrative order dated 05.03.2016 of respondent bank forfeited the gratuity of the petitioner.

19. Consequently, I hereby restore the order dated 12.06.2017 of the controlling authority.

20. In view of the above, the petition is, accordingly, allowed.

**CM APPL. No.1854/2018**

21. In view of the order passed in the present writ petition, this application has been rendered infructuous and is, accordingly, disposed of such. ■

**Petition Allowed.**

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The Index Numbers for the quarter ended March-2019 are as under:

MONTH	INDEX AS PER 2001 SERIES	CONVERSION FACTOR	INDEX AS PER 1960 SERIES
Jan 2019	307	4.63 x 4.93	7007.55
Feb 2019	307	4.63 x 4.93	7007.55
Mar 2019	309	4.63 x 4.93	7053.20
		<b>Total</b>	<b>21,068,30</b>
Average =		21,068,30/3	7022.76
Difference in excess of 4440 points			2582.76
D.A.paid for the previous quarter on (i.e. 611x4)			2444.00
Difference			138.761
Increase in number of Slabs = 138.76/4 =			34

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