

GAHC010005762023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/62/2023

JAGADISH CHANDRA
S/O. LT. DAYA RAM BRAHMA, R/O. VILL. GWJWNPURI, P.O. KOKRAJHAR,
DIST. KOKRAJHAR, ASSAM.

VERSUS

UCO BANK AND 3 ORS E
A BODY CORPORATE HAVING ITS HEAD OFFICE AT 10, BTM SARANI,
BRABOURNE ROAD, KOLKATA-700001, REP. BY ITS CHAIRMAN AND
MANAGING DIRECTOR.

2:THE GENERAL MANAGER
HRAM DEPTT. UCO BANK
HEAD OFFICE 10 BTM SARANI KOLKATA-700001.

3:THE ASSTT. GENERAL MANAGER AND ZONAL HEAD
UCO BANK
BONGAIGAON ZONAL OFFICE
STATION ROAD
P.O. AND DIST. BONGAIGAON
ASSAM-783380.

4:THE ZONAL MANAGER
UCO BANK
ZONAL OFFICE
GUWAHATI SILPUKHURI GUWAHATI-781003

Advocate for the Appellant : Mr. N. Nath, Advocate

Advocate for the Respondents : Mr. M. Sharma, Advocate

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 16.06.2023

Date of Judgment : 16.06.2023

JUDGMENT AND ORDER (ORAL)

(D. Baruah, J)

Heard Mr. N. Nath, the learned counsel for the appellant and Mr. M. Sharma, the learned counsel appearing on behalf of the respondent Nos.1 to 4.

2. The instant appeal is directed against the judgment and order dated 24.11.2022 passed by the learned Single Judge in WP(C) No.4982/2018 whereby the writ petition was partly allowed.

3. In order to decide the legality of the impugned judgment and order, this Court finds it relevant to take note of the brief facts leading to the filing of the instant appeal.

4. It appears from the materials on record that the appellant herein initially joined the Respondent Bank as Clerk on 24.04.1989. The appellant was granted promotion to Scale-I, thereafter to Scale-II and subsequently to Scale-III in the year 2006, 2009 & 2013 respectively. At the time of promotion to Scale-III on 06.08.2013, the appellant was posted as the Senior Manager at the Kokrajhar Branch of the Respondent Bank.

5. On 01.08.2015, the appellant was placed under suspension. Subsequent thereto, on 08.10.2015, a show cause notice was issued by

the Zonal Manager of the Respondent Bank (the Disciplinary Authority) thereby alleging that the appellant had acted in gross violation of the UCO Bank Officer Employees (Discipline and Appeal) Regulation, 1976 (for short, 'the Regulation of 1976') . To the said show cause notice, the appellant submitted a reply on 28.10.2015 thereby stating that the appellant had done no wrong to the bank intentionally. Thereupon, on 10.06.2016, a charge-sheet was issued stating inter-alia that the reply so submitted to the show cause notice dated 08.10.2015 was not satisfactory. Along with the said charge-sheet, the Statement of Allegation was enclosed along with Articles of Charges. The appellant thereupon submitted his reply on 21.06.2016. The Disciplinary Authority vide the communication dated 27.10.2016 intimated the Appellant that the Disciplinary Authority has decided to proceed further for holding an enquiry against the appellant and one Sri Dipak Das, Chief Manager (retired) had been appointed as an Enquiry Officer to enquire the charges framed against the appellant.

6. The Enquiry Officer, thereupon, conducted the enquiry proceedings wherein the appellant had duly participated and submitted the Enquiry Report on 18.03.2017.

7. From a perusal of the said Enquiry Report enclosed as Annexure-G to the writ petition, it transpires that the allegation Nos.1, 2, 4 & 5 were partly proved and the allegation Nos.6 & 7 were proved.

8. The said Enquiry Report thereupon was furnished to the Appellant by the respondent authorities vide the communication dated 11.09.2017 seeking comments on the enquiry report within three days from the date of receipt of the letter. It further reveals that the Appellant submitted his

reply stating inter-alia that he denied all the allegations, charges except Allegation No.3 and further that he had submitted all the necessary documents during the enquiry proceedings along with the defence representative and therefore sought the exoneration from all the allegations. It further reveals that the Disciplinary Authority vide an order dated 12.12.2017 imposed the punishment of dismissal from the bank service.

9. Being aggrieved, the appellant preferred an appeal under Regulation 17(1) of the Regulation of 1976 before the General Manager (Appellate Authority), HRM Department of the Respondent Bank on 23.01.2018. It further reveals that on 18.05.2018, the Appellate Authority affirmed the penalty imposed by the Disciplinary Authority thereby dismissing the Appeal of the Appellant. It is under such circumstances the writ petition was filed challenging the show cause notice dated 08.10.2015, the charge-sheet dated 10.06.2016, the enquiry report dated 18.03.2017, the dismissal order dated 12.12.2017 as well as the order of the Appellate Authority dated 18.05.2018. The record shows that the respondent authorities have filed an affidavit-in-opposition taking various preliminary objections as regards the maintainability of the writ petition and supporting the order of dismissal dated 12.12.2017 as well as the order of the Appellate Authority dated 18.05.2018.

10. The learned Single Judge vide the judgment and order dated 24.11.2022 partly allowed the said writ petition. At this stage, it may be relevant to mention that from a perusal of the impugned judgment and order it reveals that the contention of the Appellant before the learned Single Judge were two folds:-

(i) Firstly, the Regulation 6 (2) of the Regulation of 1976 stipulates that it is either the Disciplinary Authority who could enquire into truth of any imputation of misconduct or misbehaviour against an officer employee or appoint any other public servant to enquire into the truth thereof. It was, therefore, the contention of the Appellant before the learned Single Judge that the Enquiry Officer so appointed was a retired Chief Manager of the respondent bank, and as such the said Enquiry Officer so appointed was not a public servant. The enquiry proceedings so held were dehors the Regulation of 1976, and as such the enquiry report dated 18.03.2017 and all consequential actions taken thereupon are required to be set aside and quashed.

(ii) Secondly, it was urged before the learned Single Judge that the perusal of the Appellate order dated 18.05.2018 would show that it was a reiteration of the order passed by the Disciplinary Authority without applying its mind as to whether the findings were justified and/or as to whether the penalty was excessive or inadequate.

11. The learned Single Judge vide the impugned judgment and order negated the first contention by holding that the retired Chief Manager could have been appointed as the Enquiry Officer by taking into account the judgment of the Supreme Court rendered in the case of the ***Union of India vs. Alok Kumar***, reported in ***2010 (5) SCC 349*** as well as of upon an interpretation of Section 21 of the Indian Penal Code, 1860 (for short, 'IPC') read with Section 3 (n) of the Regulation of 1976. Accordingly, the learned Single Judge therefore was of the opinion that the enquiry report dated 18.03.2017 cannot be faulted on the ground that the Enquiry Officer so appointed was not in accordance with Regulation 6 (2) of the

Regulation of 1976.

12. As regards the second contention, the learned Single Judge taking into account Clause 17 of the Regulation of 1976 was of the opinion that the order dated 18.05.2018 by the Appellate Authority did not in any manner give indication that the Appellate Authority has applied its mind as to whether the findings were justified and/or as to whether the penalty was excessive or inadequate. Accordingly, the Appellate order was set aside and the matter was remanded back to the Appellate Authority for fresh consideration of the claim of the appellant by following the requirement under Clause 17 of the Regulation of 1976.

13. The instant writ appeal, therefore, has been filed only on the limited aspect as regards the rejection of the contention that the Enquiry Officer so appointed was not in accordance with Regulation 6 (2) of the Regulation of 1976.

14. It is also relevant at this stage to take note of that this Court vide the order dated 15.05.2023 asked the learned counsel representing the Respondent Bank to instruct the Appellate Authority to expedite the proceedings of the pending appeal. However, today when the matter was taken up, the learned counsel appearing on behalf of the respondents informed this Court that the Appellate Authority is yet to decide the said appeal.

15. In the backdrop of the above, let us take into consideration as to whether the Appellant has been able to make out a case for interference in the instant appeal. The learned counsel appearing on behalf of the Appellant relied upon the judgment of the Supreme Court in the case of

Ravi Malik v. National Film Development Corpn. Ltd. and Others reported in **(2004) 13 SCC 427** and submitted that the Regulation 23 (b) of the Service Rules and Regulations, 1982, the interpretation of which was in question before the Supreme Court is parametaria to Regulation 6 (2) of the Regulation of 1976. He submitted that the Supreme Court observed that the person appointed as an Enquiry Officer must be a public servant and not a person who was a public servant. Drawing the same analogy, the learned counsel appearing on behalf of the Appellant, therefore submitted that the appointment of the retired Chief Manager as an Enquiry Officer was in contravention with Regulation 6 (2) of the Regulation of 1976. The learned counsel for the Appellant submitted that the learned Single Judge had wrongly applied the law laid down by the Supreme Court in the case of ***Alok Kumar*** (supra) in as much as in the said case, Rule 9(2) of the Railway Service (Discipline & Appeal), Rules of 1968 was in issue wherein the Disciplinary Authority could either enquire into or appointed under Rule 9 (2) of the Rules of 1968 or under the provision of the Public Servants (Inquiries) Act, 1850 as the case may be a Board of Enquiry or other authority to inquire into the truth of any imputation of misconduct or misbehavior against the Railway servants. The learned counsel for the appellant, therefore, submitted that the learned Single Judge erred in law applying the judgment in the case of ***Alok Kumar*** (supra) when the issue was squarely covered by the judgment of the Supreme Court in the case of ***Ravi Malik*** (supra).

16. The learned counsel for the appellant further submitted that in Regulation 6 (2), the term used therein is 'any other public servant' and Regulation 3 (n) of the Regulation of 1976 defines a 'public servant' to

have the same meaning as that of the expression public servant as finds place in Section 21 of the Indian Penal Code. The learned counsel for the appellant further submitted that the learned Single Judge has misconstrued Clause Sixth of Section 21 of the IPC and held that the retired Chief Manager who was appointed as the Enquiry Authority can also be a public servant.

17. On the other hand, Mr. M. Sharma, the learned counsel appearing on behalf of the Respondent Bank submitted that the issue involved herein is squarely covered by the judgment of the Supreme Court in the case of **Alok Kumar** (supra). The learned counsel appearing on behalf of the respondent bank submitted that a perusal of the judgment and order passed by the learned Single Judge would clearly show that the learned Single Judge had duly taken into consideration the Regulation 3 (n) of the Regulation of 1976 whereby the term "public servant" has been defined to have the same meaning as that of the expression public servant as finds place in Section 21 of the IPC. Drawing reference to paragraph No.46 of the judgment in the case of **Alok Kumar** (supra), the learned counsel for the respondents submitted that the definition of 'public servant' appearing in the Penal Code denotes a person falling under any of the descriptions stated in the provision. The learned counsel for the appellant, therefore, submitted that Clause Sixth of Section 21 IPC stipulates that every Arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority would also be a public servant. The learned counsel for the appellant, therefore, submitted that there is no infirmity in the impugned judgment and order.

18. We have heard the learned counsel for the parties. The issue involved herein pertains to the expression “any other public servant” as appearing in Regulation 6 (2) of the Regulation of 1976. The term “public servant” having been defined in Regulation 3 (n) of the Regulation of 1976 to have the same meaning as that of the expression ‘public servant’ as finds place in Section 21 of the IPC. Section 21 of the IPC stipulates that the word “public servant’ denotes a person falling under any of the descriptions given therein. We are concerned with the Sixth Clause wherein it has been mentioned that every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other Competent Public Authority.

19. In the instant case, there is no denial that the Disciplinary Authority herein would be a Competent Public Authority and the Disciplinary Authority had appointed a retired Chief Manger as an Inquiry Authority to enquire into the truth as regards the allegation of misconduct against the appellant and to submit a report.

20. In the backdrop of the above, we find it relevant to quote paragraph No.46 of the judgment in the case of **Alok Kumar** (supra) which is reproduced herein under:-

“46. Another factor which we may notice is that the definition of “public servant” appearing in the Penal Code, 1860 (for short “the Code”), reliance upon which was placed by the respondents, was not brought to the notice of the Court while dealing with Ravi Malik. In terms of Section 21 of the Code a public servant denotes a person falling under any of the descriptions stated in the provision. While it refers to a different kind of persons it also brings within its ambit every arbitrator or every person to whom any cause or matter has been referred for decision or report by any court or any other competent public

authority. Furthermore, as per the twelfth clause of inclusion, in this very section, even "every person" can be a public servant. In fact, in terms of Section 21(a) a person who is in service of the Government or remunerated by fees or commission for the purpose of any public duty of a Government is also a public servant."

21. It is further relevant to take note of that pursuant to the judgment delivered by the Supreme Court in **Alok Kumar** (supra), the Supreme Court in the case of **Union of India & Others vs. P.C. Ramakrishnayya**, reported in **(2010) 8 SCC 644** had also dealt with a similar issue relating to a retired officer being vested with the delegated authority of the Disciplinary Authority to hold enquiry under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. We find it relevant to quote paragraph No.16 of the said judgment which is herein under:-

"16. In Alok Kumar this Court considered in great detail, the meaning of the word "authority" occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the disciplinary authority (see paras 26-62) to hold the inquiry. It may also be noted that in Alok Kumar, this Court also considered the decision in Ravi Malik v. National Film Development Corpn. Ltd. and distinguished it by pointing out that it was in the context of Rule 23(b) of the Service Rules and Regulations, 1982 of National Film Development Corporation. In SCC para 45 of the judgment, the Court observed as follows: (Alok Kumar case)

"45. Reliance placed by the respondents upon the judgment of this Court in Ravi Malik is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression 'public servant' appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The

Court expressed the view that 'public servant' should be understood in its common parlance and a retired officer would not fall within the meaning of 'public servant', as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. 'other authority' and 'person/persons'. In other words, the absence of the words 'public servant' of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance."

22. Now coming to the facts of the present case, we are of the view that Regulation 3 (n) read with Regulation 6 (2) of the Regulation of 1976 permits the Disciplinary Authority to delegate its authority to make enquiry to the retired Chief Manager in view of Clause Sixth of Section 21 of the IPC.

23. Accordingly, we therefore, affirm the judgment and order of the learned Single Judge. Consequently, the instant writ appeal stands dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant