

GAHC010179802018



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

Case No. : WP(C)/5574/2018

KANDARPA KUMAR KALITA
S/O LT. GIRISH CHANDRA KALITA
R/O HOUSE NO. 41, FATASHIL,
GANESHPARA, BATHOU MANDIR PATH, GUWAHATI,
P.S. FATASHIL AMBARI
P.O. DHIRENPARA
DIST. KAMRUP (METRO), ASSAM.

VERSUS

UCO BANK AND 3 ORS.
HAVING ITS HEAD OFFICE AT 10 B T M SARANI,
KOLKATA, WEST BENGAL, PIN - 700001, REP. BY ITS CHAIRMAN CUM
MANAGING DIRECTOR.

2:THE GENERAL MANAGER AND APPELLATE AUTHORITY

PERSONNEL SERVICES DEPARTMENT

UCO BANK

ADDRESS- 10 B T M SARANI
KOLKATTA
WEST BENGAL
PIN - 700001.

3:ZONAL MANAGER AND DISCIPLINARY AUTHORITY

UCO BANK

ADDRESS- ZONAL OFFICE
M.D. ROAD

SILPUKHURI
GUWAHATI
PIN - 781003.

4:SHRI PARAMANADA PAUL

ASSISTANT GENERAL MANAGER (RETIRED) AND ENQUIRY OFFICER
UCO BANK.
ADDRESS- ZONAL OFFICE
M.D. ROAD
SILPUKHURI
GUWAHATI
PIN - 781003

Advocate for the Petitioner : MR. T DEURI, MR. R BORA,MR. P C SARMA,MS. M BAISHYA

Advocate for the Respondent : MR. M SHARMA,

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

24.09.2024

Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Mr. M. Sharma, learned counsel for the respondent Nos. 1 to 3.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner is assailing the impugned Charge-sheet dated 02.05.2017 issued by the respondent No. 3, Zonal Manager and Disciplinary Authority, UCO Bank, by which disciplinary proceeding was initiated against the petitioner under the UCO Bank Officer Employees (Discipline & Appeal) Regulations, 1976, impugned Enquiry Report dated 25.09.2017 submitted by the respondent No. 4, impugned Order dated 01.01.2018 issued by the respondent No. 3, by which penalty of dismissal from service from the respondent No. 1 is imposed on the petitioner and the impugned Order dated 05.06.2018 passed by the respondent No. 2, by

which the respondent No. 2, General Manager and Appellate Authority was pleased to up-held the Order dated 10.01.2018.

3. The brief facts of the case is that the petitioner, who was holding the post of Senior Manager (Branch Head) under the respondent No. 1 Bank, i.e., UCO Bank, while he was working at Rehabari Branch of respondent No. 1 in the post of Assistant Branch Head, a disciplinary enquiry was initiated against him by Letter dated 02.05.2017 under the UCO Bank Officer Employees (Discipline & Appeal) Regulations, 1976. The respondent No. 3 had charged the petitioner under the aforesaid Article of Charges by Charge-sheet dated 29.04.2017, which is reproduced hereunder for ready reference:-

“ARTICLE OF CHARGE

Shri Kandarpa Kumar Kalita (Emp No. 35097), Senior Manager (presently under suspension), while functioning as Branch Head at Paltan Bazar Branch (1925) from 8.10.12 to 16.11.2013 has allegedly committed several acts of omission and commission, details of which are mentioned in the statement of Allegations for which Shri Kandarpa Kr Kalita is charged as under :

1. *Shri Kandarpa Kumar Kalita (Emp No. 35097) has failed to take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost devotion and diligence, which is violative of Regulation 3 (1) of UCO Bank Officer Employees' (conduct) Regulation, 1976 as amended.*

2. *Shri Kandarpa Kumar Kalita (Emp No. 35097) has acted in a manner unbecoming of a bank officer, which is violative of Regulation 3 (1) of UCO Bank Officer Employees' (conduct) Regulation, 1976 as amended.*

3. *Shri Kandarpa Kumar Kalita (Emp No. 35097) while performing his official duties or in exercise of powers conferred on him had acted otherwise than in his best judgement which is violative of Regulation 3 (3) of UCO Bank Officer Employees' (conduct) Regulation, 1976 as amended.*

4. *Shri Kandarpa Kumar Kalita (Emp No. 35097) has failed to take all possible steps to ensure the integrity and devotion to duty of all persons for the*

time being under his control and authority which is violative of Regulation 3 (4) of UCO Bank Officer Employees' (conduct) Regulation, 1976 as amended.

The violation of the above mentioned regulations on the part of Shri Kandarpa Kumar Kalita (Emp No. 35097) constitutes Misconducts punishable under UCO BANK Officer Employees (Discipline & Appeal) Regulation 1976 as amended.”

4. Thereafter, upon appointing respondent No. 4 as the Enquiry Officer and after the Enquiry Officer conducted the said enquiry on 25.09.2017 submitted the enquiry report, wherein the petitioner was found guilty of the charges alleged.

5. Thereafter, by Show Cause Notice dated 16.10.2017, the petitioner was furnished the copy of the Enquiry Report dated 25.09.2017 for submission of his comments against the said enquiry report. Accordingly, the petitioner on 21.10.2017 submitted his reply.

6. Thereafter, the Disciplinary Authority by Order dated 10.01.2018 awarded the penalty of dismissal from service of the petitioner from the respondent No. 1. The petitioner accordingly preferred an appeal on 21.02.2018 before the Appellate Authority under the provision of Regulation 17 (i) of the UCO Bank Regulation, which was dismissed by the Appellate Authority by Order dated 05.06.2018.

7. Situated thus, the present writ petition has been filed challenging the aforesaid orders of the Enquiry Officer as well as Disciplinary Authority awarding the punishment of dismissal from service and the Appellate Authority confirming the said order of the Disciplinary Authority.

8. Mr. T. Deuri, learned counsel for the petitioner submits that a perusal of

the second Show Cause Notice dated 16.10.2017 amply demonstrate that the respondents were not proceeding with an open mind and accordingly, the principles of natural justice has been grossly vitiated.

9. In support of the aforesaid submission, he relies upon the decision of the Apex Court in the case of **Babulal Das vs. State of Assam & Ors.**, reported in **2004 (2) GLT 259** and in the case of **Machum Ahmed Laskar Vs. State of Assam and Ors.**, in **WP(C) No. 9445/2019**.

10. Per contra, Mr. M. Sharma, learned counsel for the respondent Nos. 1 to 3 submits that the second Show Cause Notice issued on 16.10.2017 suffers from no irregularity or illegality whatsoever and the requisite opportunity as required in law has been duly provided to the petitioner before proceeding with the matter from the stage of submission of the enquiry report.

11. He further submits the decision of the Apex Court in the case of **Boloram Bordoloi Vs. Lakhimi Gaolia Bank & Ors.**, reported in **(2021) 3 SCC 806** to contend that after Enquiry Officer records his findings, it is always open for Disciplinary Authority to arrive at tentative conclusion of proposed punishment and indicate the same to delinquent employee enclosing copy of the enquiry report.

12. I have given my prudent consideration to the arguments made by the learned counsels for the parties and have perused the materials available on record including the citations submitted at the bar.

13. Before proceeding with the contentious issues raised by the learned counsels for the parties, apt to refer to the second Show Cause Notice dated

16.10.2017 issued to the petitioner, which is reproduced hereunder for ready reference:-

“To,
Shri K. K. Kalita, Emp No. 35097
Sr. Manager, (Presently under suspension)
UCO Bank, Rehabari Branch

Dear Sir,

Sub: Your reply to Enquiry Officer Report dated 25.09.2017
In respect of charge sheet dated 02.05.2017 issued to you

We are enclosing here with the Enquiry Report dated 25.09.2017 submitted by Shri P. Pal, AGM (Retd) & Enquiry Officer, for your comments on findings of the Enquiry report. On careful examination of the report it is observed that out of 7 allegations, allegation no. 3 (i), (ii) & (iii) have not been presented by the PO, but other allegations have been held substantiated. Accordingly, the Charge no. 1 to 4 held proved.

Since I concur with the above findings of Enquiry Officer that Charge No. 1 to 4 are proved, you are advised to submit your comments point-wise on the Enquiry Report within 5 days from the date of receipt of this letter failing which it will be construed that you have nothing to offer and I, being the Disciplinary Authority will proceed further in the matter without further reference to you.

Yours faithfully

(Disciplinary Authority)”

14. Apparent reading of the aforesaid notice that the Disciplinary Authority has categorically indicated that they have concurred with the findings of the Enquiry Officer and that Charge Nos. 1 to 4 are proved.

15. It is settled law that after completion of the enquiry, it is mandatory to furnish a copy of the enquiry report to the delinquent, in order to give the delinquent an opportunity to persuade the Disciplinary Authority not to accept the said report. However, if at this stage, the Disciplinary Authority indicates in the said show cause notice that the enquiry report submitted by the Enquiry Officer is already agreed and concurred by the Disciplinary Authority, it defies the conscience of this Court as regards the open mind of the Disciplinary Authority in pursuing with the matter.

16. Reliance is placed to the decision of the Apex Court in the case of ***Union of India and Ors. Vs. Mohd. Ramzan Khan***, reported in (1991) 1 SCC 588 and ***Managing Director, ECIL Ltd. Ors. Vs. B. Karunakar and Ors.***, reported in (1993) 4 SCC 727, wherein the Apex Court has clearly laid down that it is mandatory to give the delinquent a fair opportunity to deal with the enquiry report before the same is accepted.

17. Reference is also made to the decision of the Apex Court in the case of ***Babulal Das (supra)***, wherein this Court in paragraph Nos. 13 & 14 has held as hereunder:-

(13) This leads us to the last issue viz. Whether the Disciplinary Authority acted with a pre-determined mind and denied the opportunity to the petitioner to have his say in respect of the enquiry report so as to persuade the Disciplinary Authority to take a different view from the one taken by the Inquiry officer, resulted in miscarriage of justice. On perusal of the letter dated 3.3.98 by which the enquiry report was forwarded to the petitioner with the proposal of imposing the penalty of removal after agreeing with the findings of the Inquiry Officer there is no iota of doubt that the Disciplinary Authority first made up his mind upon agreement with the findings of the Inquiry Officer to impose the penalty of removal from service and then asked the petitioner to furnish his reply to the action proposed and not to submit any representation against the enquiry report. Thus it is a case of empty formality inasmuch as the disciplinary Authority even before furnishing the copy-of-the enquiry report asking the

petitioner to submit his reply and then upon consideration of the enquiry report and the representation to arrive at a finding relating to the penalty, came to the provisional finding in agreement with the findings recorded by the inquiry Officer to remove the petitioner from service and the petitioner was asked to submit his reply not against the enquiry report but against the penalty proposed against him. Thus the Disciplinary Authority acted with a pre-determined mind towards imposition of the penalty of removal against the petitioner even before he could make his representation persuading the Disciplinary Authority not to accept the findings recorded by the Inquiry officer. There is a purpose behind affording the opportunity of making a representation against the enquiry report and the same cannot be an empty formality, but in the instant case the Disciplinary Authority first decided, may be provisionally, to impose the penalty of removal on the petitioner upon an agreement with the findings of the Inquiry Officer and then asked the petitioner to submit his reply against the action proposed and not against the enquiry report. Thus the link between the final decision and the representation against the enquiry report is missing in the instant case. In view of the above the Issue No. E is answered accordingly.

(14) Upon answering the issues as above, i have no hesitation to hold that the order of penalty imposed against the petitioner by the impugned order dated 26. 10. 98 is not sustainable and liable to be set aside and quashed which I accordingly do. The order of penalty is also cryptic and does not disclose as to how the evidence on record was taken into consideration.”

18. Reference is also made to the decision of the Apex Court in the case of **Machum Ahmed Laskar (supra)**, wherein this Court in paragraph Nos. 18, 19 & 20 has held as hereunder:-

“18. With regard to the second show cause notice dated 06.05.2014 by which the disciplinary authority had asked for the views of the petitioner on the Enquiry Report, it appears that the said authority had stated that the findings of the Enquiry Officer were already concurred with. The aforesaid action on the part of the Disciplinary Authority is not in consonance with the requirement of affording a reasonable opportunity to a delinquent to safeguard himself as such opportunity is required to be given at all stages of a Disciplinary Proceeding.

19. In the cases of Babulal (supra) and Babul Hussain (supra), this Court has laid down that if the Disciplinary Authority, before taking the views of the delinquent on the Enquiry Report concurs with such findings, it is apparent that he has acted with a predetermined mind which is not in consonance with the requirement in law.

20. Be that as it may, this Court is of the view that even if the enquiry is held to be done in accordance with law, acting on the same by the Disciplinary

Authority before giving a reasonable opportunity to the petitioner to submit his reply to the said report is not in accordance with law and accordingly the same is interfered with and the impugned order of removal from service dated 12.05.2014 is set aside.”

21.

19. Reading the above, what emerges is that it is imparative for the Disciplinary Authority to act with open mind and a pre-determined mind at the stage of issuance of the second show cause notice to the delinquent after the completion of the enquiry, whereby he is given an opportunity to persuade the Disciplinary Authority not to accept the enquiry report. Thus, if the Disciplinary Authority at the stage of second show cause notice, agrees the findings of the enquiry report, the issuance of such notice becomes an empty formality and the same will be totally prejudicial to the interest of the delinquent and against the principles of fair play and natural justice.

20. Apparent that in the case in hand, the respondents by concurring the finding of the Enquiry Officer have not proceeded with an open mind and therefore, the impugned penalty is vitiated in law.

21. Pertinent that in the decision of the Apex Court in the case of **Boloram Bordoloi (supra)** relied by the petitioner, the same is in the context, wherein the Disciplinary Authority had tentatively taken a decision of the proposed punishment, before agreeing with the enquiry report and as such, the said case is not relevant in the facts of the present case.

22. In view of the above, the impugned order of removal from service dated 10.01.2018 is illegal and hereby set aside.

23. Resultantly, the petitioner is directed to be re-instated in service. However, taking into consideration the nature of charges, the respondent authorities, if so advised, may proceed from the stage of issuing the second show cause notice against the report of the Enquiry Officer and thereafter, to take a decision strictly in accordance with law.

24. In that event, interest of justice would require that the role of Disciplinary Authority should be played by any other person competent to discharge the said role other than the Officer, who was the Disciplinary Authority at that relevant point of time.

25. It is further observed that on the re-instatement as directed above, the petitioner would not be entitled to any back wages but would be entitled to only for the notional benefits including seniority in the appropriate scale of pay.

26. Writ petition accordingly stands allowed, in terms of the directions made above.

No order as to cost.

JUDGE

Comparing Assistant