

Court No. - 49**Reserved****Case :-** WRIT - A No. - 18719 of 2024**Petitioner :-** Navaneet Kumar Mishra**Respondent :-** Union of India and others**Counsel for Petitioner :-** Kedar Nath Mishra**Counsel for Respondent :-** A.S.G.I., Gyan Prakash Srivastava**Hon'ble J.J. Munir,J.**

1. This writ petition is directed against the order dated 12.01.2024 passed by the General Manager (H.R.M.), Baroda U.P. Bank, Gorakhpur, the Disciplinary Authority, ordering the petitioner's suspension from service in connection with his arrest on a criminal charge.

2. On 27.11.2024, a notice of motion was issued by this Court, requiring the Disciplinary Authority to file his own affidavit, indicating whether the order of suspension dated 12.01.2024 is one pending disciplinary proceedings, investigation or trial, or is it just one until further orders pending nothing. A personal affidavit was filed by the Disciplinary Authority, to wit, the General Manager of the Bank, substantially answering the petitioner's case. Treating the personal affidavit of the Disciplinary Authority to be a counter affidavit, the petitioner has filed a rejoinder.

3. The parties having exchanged affidavits, the petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

4. Heard Mr. Kedar Nath Mishra, learned Counsel for the petitioner and Mr. Gyan Prakash Srivastava, learned Counsel appearing on behalf of respondent Nos.2, 3 and 4.

5. The petitioner was arrested by the C.B.I. on 10.01.2024 in connection with FIR No. RC0062024A0002/2024, under

Section 7 of the Prevention of Corruption Act, 1988, read with Section 120-B IPC, Police Station CBI/ ACB, Lucknow. The allegation against the petitioner appears to be that he demanded a bribe of Rs.12,000/- as illegal gratification from a customer of the Bank for enhancing his cash credit limit from Rs.2 lacs to Rs.5 lacs. A complaint was made to the Superintendent of Police, ACB/ CBI, Lucknow. The complaint was discretely verified and after undertaking the formalities of a pre-trap proceedings, a trap was laid. The CBI, during the raid, recovered a sum of Rs.2000/- from one Kumar Gaud @ Rahul, a Class-IV employee in Bank, who was found in possession of the chemically treated bank notes. The allegation is that Kumar Gaud @ Rahul received the said sum of money as a part of the bribe of Rs.12,000/- upon instructions of the petitioner. The petitioner was arrested alongside the Class-IV employee and remanded to judicial custody. This led the respondents to pass the impugned order of suspension dated 12.01.2024, noting the fact of the petitioner's arrest and directing his suspension from service till further orders of the competent Authority.

6. The petitioner has been admitted to bail *vide* order dated 04.04.2024 passed by the Lucknow Bench of this Court in Criminal Misc. Bail Application No.1899 of 2024. The petitioner, thus, remained incarcerated for a period of about three months. Upon his release from custody, he made an application dated 18.04.2023 to the respondents, requesting reinstatement in service. The petitioner also pointed out in the application that there were no incriminating circumstances against him.

7. Primarily this Court while issuing the notice of motion was keen to know what kind of powers of suspension the respondents have exercised. The reason is that it is well settled that a bald order of suspension cannot be passed, that is to say,

a suspension from service that does not have in contemplation the completion of any kind of proceedings, such as criminal investigation, a criminal trial or disciplinary proceedings. In the counter affidavit, the respondents have drawn the Court's attention to Regulation 30 of the Baroda U.P. Bank (Officers and Employees) Service Regulations, 2020 (for short, 'the Regulations of 2020'). The relevant Regulation reads:

"30. Officer or employee arrested for debt or on a criminal charge. -

(1) An officer or employee who is arrested for debt or on a criminal charge or detained in pursuance of any process of law for the time being in force, may, if so directed by the Competent Authority, be treated as being or having been under suspension from the date of his arrest, and/or detention, as the case may be, upto such date or during such period as the Competent Authority may direct:

Provided that in respect of the period in regard to which he is so treated, he shall be paid subsistence allowance as specified in regulation 46.

(2) Any payment made to an officer or employee under sub-regulation (1) shall be subject to adjustment of his pay and allowances which shall be made according to the circumstances of the case and in the light of the decision as to whether such period is to be accounted for as a period of duty or leave:

Provided that full pay and allowances shall be admissible only if the officer or employee, -

(i) is treated as on duty during such period; and

(ii) is acquitted of all charges or satisfies the Competent Authority, in case of his release from detention or his detention being set aside by the Competent Court, that he had not been guilty of improper conduct resulting in his detention.

(3) (a) An officer or employee shall be liable to dismissal or to any of the other penalties referred to in regulation 39 if he is committed to prison for debt or is convicted of an offence which in the opinion of the Competent Authority, either involves moral turpitude, or has a bearing on any of the affairs of the Bank or on the discharge by the officer or employee of his duties in the Bank, the opinion in this respect of the Competent Authority shall be conclusive and binding on the officer or employee;

(b) such dismissal or other penalty may be imposed as from the date of his committal to prison or conviction and nothing in regulation 39 shall apply

to such imposition.

(4) Where an officer or employee has been dismissed in pursuance of sub-regulation (3) and the relative conviction is set aside by a higher court and the officer or employee is acquitted, he shall be reinstated in the service of the Bank.

(5) Where the absence of an officer or employee from duty is without leave or his overstay is due to his having been arrested for debt or on criminal charge or to his having been detained in pursuance of any law for the time being in force, the provisions of regulation 23 shall also apply and for the purpose of that regulation the officer or employee shall be treated as having absented himself without leave or as the case may be, overstayed otherwise than under circumstances beyond his control."

8. Apparently, the Disciplinary Authority is empowered to treat an officer or employee under suspension in the event of detention upon a criminal charge, if the said Authority so directs, from the date of his arrest or detention *'upto such date or during such period as the Competent Authority may direct'*. Apparently, the Bank have exercised their powers to place the petitioner under suspension pending inquiry, because he was arrested on a criminal charge, relating to demand of illegal gratification by the CBI. The power has been exercised by the Disciplinary Authority under Regulation 30 of the Regulations of 2020, where in case of arrest or detention on a criminal charge, the competent Authority may direct the officer or the employee's suspension, may be treated as being or having been under suspension from the date of his arrest. It is for the said reason that the order of suspension has been passed by the Disciplinary Authority on 12.01.2024 with effect from the date of the petitioner's arrest, i.e. 10.01.2024. Now, Regulation 30 also empowers the Disciplinary Authority, called the competent Authority under the Regulation 30, to direct the suspension upto such date or during such period as the said Authority thinks fit. The Disciplinary Authority in this case has directed the order of suspension to continue until further orders of the competent

Authority.

9. So far as the order of suspension is concerned, the power was validly exercised under Regulation 30 of the Regulations of 2020, because the petitioner was arrested on a criminal charge. The only question is, if the petitioner's continued suspension is a valid exercise of power by the Disciplinary Authority? In the counter affidavit, though it has been asserted that the Departmental Review Committee have decided to continue the order of suspension, but it is not shown or said anywhere in the counter affidavit, if the petitioner has been charge-sheeted in Court in connection with the criminal case or charges framed against him by the Court, post institution of criminal proceedings. It is also not indicated in the counter affidavit, if any departmental charge-sheet has been issued to the petitioner, though there is a definitive case by the respondents that the Department are contemplating institution of disciplinary proceedings against him.

10. This Court, not to comment on the merits of the case against the petitioner, but for the limited purpose of inviting the respondents' attention to the charge against the petitioner, must say that the case against him appears to be one of conspiracy, where there is no recovery of any chemically treated notes from him by the CBI. Considering the sum of money involved and that recovered, the possibility of a false implication cannot be altogether ruled out. The respondents have not so far issued a charge-sheet to the petitioner, finally disclosing their resolve to pursue disciplinary proceedings against him. There is not even initiation of disciplinary proceedings against the petitioner, because the order of suspension has not been passed in contemplation of disciplinary proceedings or pending disciplinary proceedings. Thus, so far the order of suspension

goes, it is one passed in the exercise of power to suspend an employee, who has been detained or arrested on a criminal charge for such period of time as the competent Authority may direct. It is also not shown that the CBI or any other investigating agency have filed a police report instituting criminal proceedings in Court against the petitioner. The petitioner, on the other hand, is suffering suspension until further orders, in consequence of his arrest on a criminal charge without any kind of proceedings taken against him, for a period as long as a year and a half, approximately. It must be remembered that suspension, pending inquiry or trial, is ultimately a process in aid of some proceeding, like criminal investigation or trial or disciplinary proceedings. It is not a punishment in itself. However, an inordinately long period of suspension may degenerate into punishment if the relevant proceedings are not taken to their logical conclusion. The status or the result of the criminal investigation or the criminal trial, if any, is not known to this Court.

11. In the circumstances, while this Court would decline to quash the order of suspension, impugned at this stage, it is directed that the respondents shall re-consider the issue of continuing with the petitioner's suspension from service, bearing in mind the nature of the charges against the petitioner, the evidence appearing against him in police investigation and the stage of investigation, and/ or criminal trial, and, the likely time, the criminal investigation or trial would take to reach a logical conclusion.

12. In the circumstances, the respondents are directed to review the petitioner's case about a revocation of his suspension on relevant considerations, including the guidance in this judgment, within a period of six weeks of receipt of a

copy of this order by the Disciplinary Authority. It is further directed that the petitioner's subsistence allowance, if not already paid for the whole or any part of the period of suspension, shall be paid forthwith by the respondents.

13. This writ petition is **disposed of** in terms of the aforesaid orders.

14. Let a copy of this order be communicated to the General Manager (H.R.M.), Baroda U.P. Bank, Buddh Vihar Colony, Tara Mandal, Gorakhpur, the Disciplinary Authority through the learned Chief Judicial Magistrate, Gorakhpur by the Registrar (Compliance).

Order Date :- 22.5.2025
Anoop

(J.J. Munir)
Judge