

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

343

**CWP-7432-1994 (O&M)
Date of decision:20.09.2017**

NM Manaktala

....Petitioner

Versus

UCO Bank and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. D.R.Sharma Advocate for the petitioner.

Mr. Vinod K.Kataria, Advocate for respondents No.1 to 3.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has assailed the orders dated 20.12.1990 and 14.10.1991 by which petitioner has been removed and his appeal has been rejected (Annexures P6 and P8 respectively).

2. The petitioner while working as an Assistant Manager in the respondent-Bank was subjected to disciplinary proceedings. On 28.09.1989 he was charge-sheeted for remaining unauthorized absent for various period under Regulation 6 of UCO Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (for short 'Regulations, 1976'). Petitioner had

filed his reply to the charge-memo merely denying the alleged charge on 15.11.1989. Thereafter the respondents proceeded to hold an inquiry against the petitioner for remaining unauthorized absent for various period by appointing Inquiring Officer on 27.06.1990. The inquiring officer submitted his report to the disciplinary authority. Disciplinary authority issued a show cause notice to the petitioner asking his explanation with proposed punishment on 19.07.1990 for which petitioner had submitted his reply on 04.08.1990. The disciplinary authority proceeded to impose the penalty of removal from service on 20.12.1990. Aggrieved by the order of removal from service petitioner preferred an appeal before the appellate authority. The appellate authority affirmed the decision of the disciplinary authority on 14.10.1991. Thereafter petitioner filed a revision petition. It was not decided by the revisional authority having regard to the language employed in Regulation No. 18 to the extent that revisional authority has suo moto power to look into the appellate authority's order within a period of 6 months. Hence the petitioner's revision petition was not entertained and no order to that effect has been passed. Hence, the present petition .

3. Petitioner submitted that his absence for various period stated in the charge-memo was beyond his control as for each and every unauthorized absence he has submitted his explanation like father in law's death, wife was suffering from illnesses etc. It was further submitted that disciplinary authority failed to furnish list of documents, list of witnesses along with the charge-sheet which is in violation of Regulation 6 to the extent that if disciplinary authority issue chargesheet in that event he is

bound to furnish list of documents and list of witnesses. In support of this contention petitioner relied on decision reported in 2016(4) SCT 77 titled as ***Union of India and others versus Sushil Kumar Vashisht and another***. It was further contended that the disciplinary authority failed to furnish copy of the inquiring officer's report which is mandate under Regulation 7(ii). In support of the said contention learned counsel for the petitioner relied on two decisions namely ***Union of India and others Versus Mohd. Ramzan Khan*** reported in (1991) 1 SCC 588 and ***Managing Director, ECIL, Hyderabad versus B.Karunakar*** reported in 1994 Supp(2) SCC 391. It was further contended that the disciplinary authority relied on past records while imposing the penalty of removal from service. In support of this contention, he relied on judgment titled as ***Krushnakant B. Parmar Versus Union of India and another*** (Civil Appeal No.2106 of 2012). It was submitted that having regard to the alleged charges of remaining unauthorized absent imposition of penalty of removal from service would be too harsh in this regard, he has relied on Supreme Court decision namely ***B.C. Chaturvedi versus Union of India and others*** reported in 1995 SCC(6)749. Thus, petitioner's contentions are that there are violation of various provisions of Regulations, 1976.

4. Per contra, learned counsel for the respondents submitted that petition is liable to be rejected on the ground of delay of 2 ½ years. Since the order of appellate authority is dated 14.10.1991 and the present petition has been filed only on 23.05.1994. It was submitted that petitioner has not cooperated in the inquiry proceedings by adducing necessary medical

certificates and other evidences. Having regard to the conduct of the petitioner he is not entitled for any relief. That part there is no infirmity in the inquiry proceedings. The contention of the petitioner with reference to non-supply of list of documents, list of witness, supply of inquiry are all technical ground and the same have not been urged before the inquiring authority, disciplinary authority and appellate authority. In the absence of raising such contentions before the competent authority petitioner is not permitted to raise before this court. Thus, learned counsel for the respondents submitted that petitioner has not made out a case so as to interfere with the orders of disciplinary and appellate authorities. In support of his contention he relied on 7 decisions which are as follows:-

- 1) 2016(3) SLR 33 (Pb.& Hry) titled as Jagtar Singh and Union of India and others
- 2) 2016(1) SLR 97 (Delhi) titled as Sangeeta versus Union of India and others
- 3) 2016(2) SLR 746 (Pb.& Hry.) titled as Lilly Paul versus State of Punjab and others
- 4) 2016(2)SLR 618 (Kar.) titled as Sri N.K.Kazi versus The Divisional Controller, KSRTC
- 5) 2015(6) SLR668 (Pb.& Hry.) titled as Managing Director, PRTC and others versus Gurdev Singh and another
- 6) 2016(5)SLR 658 (Cal.) titled as Dayanand Paswan versus Coal India Ltd. and others
- 7) 2016(4) SLR 217 (Delhi) titled as Jitendra Nath Singh versus

Union of India and others.

5. Heard learned counsel for the parties.

6. At the outset, remaining unauthorized absent by an officer of the Bank no doubt is a serious misconduct. Perusal of the charge it is evident that petitioner has frequently absented himself. Since under Article 226 of the Constitution this court cannot interfere on the merit. Therefore, only on legal issue this court can interfere. Learned counsel for the petitioner submitted that from the date of initiation of charge sheet till disposal of his appeal there is violation various provisions of Regulations 1976 like non-supply of list of documents, list of witnesses and inquiring officer's report. Further question before this court is that the consideration of extraneous material to the disciplinary proceedings like past event/records and further after framing of charge certain events to the extent that petitioner remained absent which is not part and parcel of the charge sheet, quantum of penalty for remaining unauthorized absent for over all 95 days removal from service is sufficient or not? Non-supply of documents and list of witnesses and copy of inquiring officer's report are legal issues that can be urged at any point of time. Therefore, admittedly respondents have not furnished list of witnesses, list of documents along with charge-sheet. Further copy of the inquiry officer's report has not been made available to the petitioner along with show cause notice for proposing to impose the penalty. Past records cannot be taken into consideration as held by the Supreme Court. In other words, beyond charge levelled against an employee cannot be looked into while imposing penalty unless and until statutory provision provides for it.

Perusal of the Regulation 7 do not provide for the disciplinary authority to look into the extraneous materials like past events and future events (framing of charge). The non-supply of copy of inquiring office's report is a mandatory as held by the Constitution Bench in the judgment of ***B.Karunakar's*** case (supra) it is in violation of Regulation 7 of the Regulations, 1976. On this ground also proceedings from the passing of penalty order and appellate authority's orders are liable to be set aside. Coming to the question of delay of 2 ½ years, it is to be noted that petitioner inadvertently filed a revision petition. Thereafter, due to non-consideration of revision petition, he has presented this petition. Reasonable period for approaching this court has to be taken into consideration as 3 years with reference to filing of suit for the purpose of limitation. Thus, the challenge to the order dated 14.10.1991 on 23.05.1994 is within the limitation of 3 years. The revisional authority should have rejected at threshold on the ground non-maintainable and even to this no order is passed. Hence the respondents' contention that petition is belated is hereby rejected. Learned counsel for the respondent submitted that petitioner urged technical ground which have not been urged before the inquiring authority, disciplinary authority and appellate authority. It is to be noted that violation of any regulation is a legal ground. Such contention can be urged for the first time in instant writ petition as it is first court of instance. Therefore, the contention of the respondents that petitioner has raised technical ground for the first time in the instant writ petition is hereby rejected. The judgments cited by learned counsel for the respondents in the

cases of Jagtar Singh, Sangeeta, Lilly Paul, Sri N.K.Kazi, Managing Director PRTC, Dayanand Paswan and Jitendra Nath Singh (supras) are relating to issues on merits to the extent of remaining unauthorized absent and imposing the penalty, none of the decision is relating to non-supply of list of documents, list of witnesses and inquiring officer's report. So also whether past record or events has been taken into consideration for the purpose of imposing penalty or not. Therefore, cited decisions by the respondents' counsel have no application to the present case. Accordingly, they are distinguished. It is to be noted that petitioner is ousted from service on 20.12.1990 and CWP is pending since 1994. Therefore, instead of remanding the matter to the disciplinary authority from the defective stage like non-supply of list of documents and witnesses, non-supplying of inquiring officer's report and further extraneous material taken while imposing penalty of removal from service i.e., proceeding from the defective stage may not be appropriate. In the present case if the petitioner was to be in service, he would have attained age of superannuation and retired from service on 30.06.2011. Therefore, it is not appropriate for remanding the matter to the disciplinary authority to proceed with the furnishing of copy of the inquiring officer's report. That apart, the respondents have not furnished list of documents and list of witnesses when the charges were framed. Faced with these lacunas it is not appropriate for remanding the matter. Consequently, orders dated 20.12.1990 and 14.10.1991 (Annexures P6 and P8) are hereby set aside. The respondent-Bank is hereby directed to pass suitable order and treat the petitioner as if

he has attained age of superannuation on 30.06.2011 and extend notional service benefits to the petitioner.

7. With the above observation, petition stands allowed.

20.09.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No