IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 **CWP-6817-2014 (O&M)**
Date of decision:08.01.2018

Raj Kumar

....Petitioner

Versus

UCO Bank and another

.... Respondents

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

Present: Mr.Maninder Arora, Advocate for the petitioner along with the petitioner.

Mr. Sanjiv Gupta, Advocate for the respondent-Bank assisted by Mr. Dharamveer Singh, Senior Manager, UCO Bank, Kandhla Branch.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the charge-sheet dated 14.02.2009 (Annexure P1), dismissal order dated 31.05.2010 (Annexure P2), appellate authority's order dated 29.11.2010 (Annexure P3) and reviewing authority's order dated 28.08.2013 (Annexure P7).

2. Petitioner while working as Branch Manager of Kandhla Branch during the period between 13.08.2007 to 01.07.2008 on certain allegations charge-sheet was filed on 14.02.2009. As on the date of charge-sheet, petitioner was working as Assistant Chief Officer, UCO Bank, Zonal Office Chandigarh. Charge-sheet was issued by the AGM, UCO Bank Zonal Office, Bareilly. After receipt of the charge-sheet petitioner made communication on 02.03.2009 seeking for inspection of records. On 17.03.2009, respondent-Bank have permitted the petitioner to inspect the

records. No time limit was stipulated for inspection of records. Further on 25.05.2009 petitioner inspected the records. In the meanwhile respondent-Bank proceeded to appoint Inquiry Officer on 02.04.2009. Thereafter, on 13.04.2009 respondent-Bank furnished list of documents. Thus, respondent-Bank have proceeded to hold inquiry against the petitioner and concluded the inquiry holding that the charges levelled against the petitioner were proved. Pursuant to the inquiring officer's report, disciplinary authority proceeded to impose the penalty of dismissal from service on 31.05.2010. Feeling aggrieved by the order of dismissal petitioner preferred appeal before the appellate authority and it was rejected on 29.11.2010. Petitioner is stated to have filed review application before appellate authority. During pendency of the review application he had filed supplementary review application in view of the later development relating to discharge in the criminal proceedings. Reviewing authority rejected the petitioner's claim on 28.08.2013. Hence the present petition.

3. Learned counsel for the petitioner submitted that petitioner has not been provided ample opportunity of submission of reply to the charge-sheet with reference to documents which are going to be relied in the inquiry. Despite requisition respondent-bank have proceeded to appoint Inquiring Officer and thereafter proceeded to furnish list of documents on 13.04.2009 i.e. much after appointment of Inquiring Officer. These dates and events shows that respondent-Bank are biased when the regulations provides for furnishing of documents i.e. going to be relied in the inquiry in non-compliance of furnishing of documents resulted in denials of

reasonable opportunity to defend the charges levelled against the petitioner. It was further submitted that reply to the charge-sheet has not been considered before the appointment of Inquiring Officer. In other words, hurriedly Inquiring Officer was appointed by the disciplinary authority. It was further contended that four witnesses have been cited and among them two witnesses were examined. One extraneous witness has been examined who is not cited as witness. It is also contended that petitioner was not permitted to take legal assistance and the respondent-Bank do not want to bear expenses of the legal assitance and they have denied assistance of Lawyer also. In view of these facts and circumstances from the date of appointment of Inquiring Officer, further proceedings till rejection of review application dated 28.08.2013 are liable to be set aside.

4. Per contra, learned counsel for the respondent-Bank raised preliminary objection relating to maintainability of writ petition stating that issuance of charge-sheet by the Assistant General Manager, Bareilly is under challenge. Allegation relates to Kandhla Branch, Uttar Pradesh. Therefore, this court has no jurisdiction. It was further submitted that disciplinary authority's has passed order from the Uttar Pradesh whereas reviewing authority passed order from West Bengal. Therefore, petitioner had cause of action either in Uttar Pradesh or West Bengal. In support of this contention, learned counsel for the respondent-Bank relied on following decisions:-

1. ***Gurdial Singh versus Food Corporation of India*** reported in 2006 (3) SCT 97

2. ***Raj Kumar versus Union of India and others*** reported in 2005 (2) SCT 589

3. ***Abdul Kafi Khan versus Union of India and others*** reported in 1979 AIR (Calcutta) 354

5. Learned counsel for the respondent-Bank further submitted that even though appointment of Inquiring Officer is on 02.04.2009 whereas petitioner has been provided list of documents on 13.04.2009 even he had ample opportunity of perusal of the list of documents and to apprise the Inquiring Officer. Therefore, petitioner has not made out a case so as to interfere in respect of any lacuna or procedural aspect in respect of non-furnishing of list of documents prior to appointment of Inquiring Officer. It was also submitted that petitioner was permitted to inspect the records on 17.03.2009. However, such opportunity was not availed by him. Therefore, respondent-Bank have proceeded to appoint Inquiring Officer and proceeded with the inquiry proceedings. Learned counsel for the respondent-Bank submitted that even though four witnesses have been cited, witnesses No.3, 4 and one Mr. Arun Malhotra have been examined having regard to the note in the charge-sheet. Thus, there is no factual or legal lacuna. It is also submitted that legal defence representative was permitted in accordance with regulations. Thus, there is no infirmity in the proceedings.

6. Heard learned counsel for the parties.

7. Learned counsel for the respondent-Bank raised preliminary issue relating to maintainability of the petition. He has referred ***Gurdial Singh's***

case (supra), Raj Kumar's case (supra) and Abdul Kafi Khan's case (supra). Among these decisions one is relating to no cause of action arisen at particular place. Second and third decisions are relating to partial cause of action accrues in the case. Supreme court in the case of ***Naval Kishore Sharma Versus Union of India and others*** (AIR 2014 SC 3607) held that partial cause of action arises within the court's territorial jurisdiction. In that event writ is maintainable. Therefore, contention of learned counsel for the respondent-Bank that this court has no jurisdiction in respect of challenge to the charge-sheet and consequential orders passed by the disciplinary authority, appellate authority and reviewing authority from Uttar Pradesh and West Bengal is rejected. Moreover, perusal of charge-sheet dated 14.02.2009 (Annexure P1) it is evident that disciplinary authority insofar as petitioner/officer is Assistant General Manager, as on 14.02.2009 petitioner was working as Assistant Chief Officer in Zonal Office Chandigarh. Thus, w.e.f. 14.02.2009 petitioner had cause of action at Chandigarh insofar as challenge to Annexure P1 and consequential orders. Thus, respondents have not made out a case insofar as jurisdiction of this court insofar as challenge to Annexure P1 and consequential orders.

8. Petitioner has not made out a case insofar as interference in respect of charge-sheet dated 14.02.2009. Perusal of the records it is evident that after receipt of the charge-sheet petitioner had submitted application on 02.03.2009 for inspection of records. On 17.03.2009 respondent-Bank have permitted the petitioner to inspect the records. However, it is to be seen from the communication dated 17.03.2009. Respondent-Bank have not

stipulated any condition relating to by which date he is required to inspect and so also effect of non-inspection of records how the respondent-Bank will proceed in respect of the disciplinary proceedings. When things stood thus, on 02.04.2009 respondent-Bank have appointed Inquiring Officer. At the same time petitioner was permitted to inspect the records on 25.05.2009. In the meanwhile on 13.04.2009 respondent-Bank have furnished list of documents. Having regard to the dates and events it is evident that petitioner was not given ample opportunity to make effective reply to the charge-sheet to the extent that in the absence of likely to be relied on documents in the inquiry was not made available to the petitioner to file reply to the charge-sheet. Respondent-Bank have hurriedly proceeded to appoint Inquiring Officer on 02.04.2009. If the disciplinary authority was not satisfied with the petitioner's reply in that event only Inquiring Officer is required to be appointed whereas in the present case, disciplinary authority before receipt of reply to the charge-sheet proceeded to appoint Inquiring Officer on 02.04.2009. At the same time, after appointing Inquiring Officer proceeded to supply list of documents on 13.04.2009 i.e. much after appointment of Inquiring Officer. Perusal of these dates and events it is evident that petitioner has not been given ample opportunity so also there is violation of regulations insofar as receipt of the reply to charge-sheet and further its consideration whether to appoint Inquiring Officer or not. Examination of witness like Sh. Arun Malhotra who was an extraneous witness and not giving assistance of defence representative in the inquiry is concerned, it is to be noted that regulation do not provide for examination of extraneous witness. Even no material has been produced on record to show that Presenting Officer proposed to examine Mr. Arun Malhotra as a witness. Even though, he has not been cited as witness along with charge-sheet. Therefore, there is lacuna in examination of Mr. Arun Malhotra who is extraneous witness. Such action would not cure merely stating that in the charge-sheet disciplinary authority reserves right to place documents as well as witnesses to the Presenting Officer unless and until regulation provides such provision.

9. The respondent-Bank is hereby directed to verify if the disciplinary authority is identified as Assistant General Manager insofar as post holder like petitioner. Then if petitioner was working outside the administrative control of AGM Bareilly as on the date of issuance of charge sheet and if petitioner was working under AGM of Chandigarh in that event AGM, Chandigarh would be identified as disciplinary authority or not? If AGM, Chandigarh is identified as disciplinary authority thus further action in the disciplinary proceedings are required to be taken by the AGM, Chandigarh. In this regard necessary order be passed by the higher authority or competent person within a period of one month from the receipt of this order.

10. Matter is remanded to the disciplinary authority to proceeded with consideration of petitioner's reply to charge-sheet. If the disciplinary authority feels that reply to charge-sheet is not satisfied in that event he is permitted to hold disciplinary proceedings in accordance with law. Since allegations relates back to 2007-2008, disciplinary authority is hereby

directed to complete inquiry proceedings within a period of 6 months from today. Petitioner is entitled to service benefits including monetary benefits from the date of dismissal till date. Same shall be calculated and disbursed within a period of 4 months from today. Disciplinary authority proceeded to appoint Inquiring Officer without giving ample opportunity of making effective reply to the charge-sheet. On that score from the appointment of inquiring officer on 02.04.2009 to 28.08.2013 whatever action taken by the respondent-Bank either by the disciplinary authority, appellate authority and reviewing authority are set aside.

CWP stands allowed in part.

(P.B.BAJANTHRI)
JUDGE

08.01.2018
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No