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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 9th October, 2020

\+ **W.P.(C) 7642/2020 & CM APPL. 25306/2020**

UNION BANK OF INDIA & ANR. ..... Petitioners
Through: Mr. Rajat Arora, Advocate. (M:9810176964)

versus

SHRI RAJINDER KUMAR SINGHAL & ANR. ..... Respondents
Through: Mr. Atul Tripathi and Mr. K. C. Dubey, Advocates for R-1. (M:9560018960)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done by video conferencing.

2. The Respondent was an employee of the Union Bank of India *(hereinafter, "Bank")*. A charge sheet was issued against him on 5th March, 2012 alleging that loans were issued by him accommodating certain parties which caused losses to the Bank. A show-cause notice was issued and, thereafter, the Inquiry Officer was appointed. The report of the Inquiry Officer dated 6th October, 2012 held the Respondent/employee *(hereinafter, "employee")* guilty of the charges levelled against him. Accordingly, the Disciplinary Authority of the Bank vide order dated 7th March, 2013 imposed major penalty of dismissal on the employee. The relevant extract of the dismissal order passed by the Disciplinary Authority is set out hereinbelow:

"…
Based on the allegations proved against the CSO, the Inquiring Authority has rightly held following charges as proved against him and I concur with the findings of the Inquiring Authority:

1. *Failure to take all possible steps to ensure and protect the interest of the Bank.*
2. *Failure to discharge his duties with utmost devotion and diligence.*
3. *Failure to discharge his duties with utmost integrity and honesty.*
4. *Acting otherwise than in his best judgement in the performance of his official duties.*

Looking to the nature & seriousness of the aforesaid allegations/charges held as proved against Shri Singhal, I am of the opinion that the ends of the justice will be met by imposing on him the major penalty of Dismissal from the services of the Bank with immediate effect.

Accordingly, in exercise of the powers vested in me in term of Regulation 7 of Union Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976, I hereby pass the following order.

ORDER

The major penalty of Dismissal from the services of the Bank will immediately effect, be and is hereby imposed on Shri R. K. Singhal."

3. In the appeal filed against the order of the Disciplinary Authority, the Appellate Authority of the Bank also went into the entire record, examined the charges and upheld the penalty imposed. The operative portion of the Appellate Authority's order dated 17th April, 2014 is set out below:

> "*The Appellant has not brought on record any new facts/evidence which would warrant reconsideration of the penalty imposed on him. Therefore, I do not find any merit to interfere with the decision of the Disciplinary Authority. I am of the opinion that the Major penalty of 'Dismissal from the services of the Bank' imposed on the Appellant is just and proper.*
> *The appeal of Shri RK Singhal is hereby rejected*"

4. Thereafter, notice was issued by the Bank for forfeiture of gratuity on 24th March, 2017. The basis of the said notice was that monetary loss was caused to the Bank and, accordingly, as per Section 4(6)(a) of the Payment of Gratuity Act, 1972 *(hereinafter, "Act")* it was held that the gratuity amount would be liable to be forfeited. This notice resulted in order dated 29th June, 2017 directing forfeiture of the gratuity due to the employee.

5. The employee had, on 20th December, 2017 approached the Controlling Authority under the Act. The Controlling Authority framed the following four issues for consideration:

> "*i. Whether the applicant can file the gratuity case in controlling authority Delhi jurisdiction.*
> *ii. Whether the delay in filing claim for gratuity can be condoned?*
> *iii. Whether the action of forfeiting the amount of gratuity payable to the applicant on account of quantified loss occurred to the bank? If not what amount is payable to him?*
> *iv. If the gratuity is payable to the applicant, whether it should be paid with interest or not?*"

6. Thereafter, the Controlling Authority vide order dated 23rd January 2019 held that it had jurisdiction as the employee was now residing in Delhi.

The delay in filing the claim for gratuity was condoned. On issue number 3, the Controlling Authority passed an order directing the release of the gratuity amount on the presumption that the employee was compulsorily retired from service and held that interest would be payable to the employee. The order of the Controlling Authority dated 23rd January, 2019 reads as under:

> "*Thus the applicant is entitled-for payment of gratuity of Rs. 1 0,00,000/= (Rupees Ten Lac Only) along with interest @10% per annum. Non-applicant is directed to pay the amount of Rs. 10,00,000/= (Rupees ten Lac Only) along-with simple interest @10% per annum on the payable gratuity amount of Rs.10,00,000/ with effect from 13-03-2013 to the date on which it is paid to Sh. Rajinder Kumar Singhal (Employee No:-212705) within Thirty days of receipt of this order and I order accordingly. Section 8 of the Payment of Gratuity Act 1972 provides that the amount of interest payable shall in no case exceed the amount of gratuity payable under this Act.*"

7. This order was appealed against by the Bank and the Appellate Authority vide impugned order dated 13th July, 2020 merely held that the Controlling Authority has elaborately decided all the issues and no interference is called for. The operative portion of the order of the Appellate Authority reads as under:

> "*On perusal of relevant records submitted by both the parties along with the records in claim application No. ALC-II//36(70)/2016, I am of the considered opinion that the CA has elaborately dealt with all the issues raised by the Appellant and has decided all the relevant and pertinent issues by applying his mind judiciously by citing*

the relevant judgments of Hon'ble Delhi High Court in his order. I find no reason to differ with the findings of the CA. The order dated 23.01.2019 of the Controlling Authority is thus confirmed."

8. The submission of Mr. Arora, ld. Counsel appearing for the Bank is that firstly the Controlling Authority has premised its order on an incorrect basis i.e. that the employee was compulsorily retired. However, in fact, the employee was not compulsorily retired but was dismissed from service and thereafter a show cause notice was issued to the employee on assessing the loss. Thus, it is submitted that there is a fundamental error in the Controlling Authority's order itself.

9. Mr. Arora, ld. counsel further submits that despite there being such an error, the Appellate Authority has given no reasons for dismissal of the appeal. It has merely recorded the contentions of the parties and rejected the appeal in one paragraph. He submits that such a treatment meted out in an appeal would be completely unsustainable and the appeal ought to be decided on merits after giving proper reasons.

10. On the other hand, Mr. Tripathi, ld. Counsel appearing for the employee with Mr. Dubey, ld. counsel contends that the Controlling Authority has given a very detailed order discussing each and every aspect of the matter. The Appellate Authority has agreed with the reasoning given by the Controlling Authority and thus, the order of the Appellate Authority cannot be held to be unreasoned and without application of mind.

11. The Court has perused the impugned orders of the Appellate Authority and the Controlling Authority, as well as the various documents placed on record. The stand of the Bank appears to be justified, inasmuch as

the order of the Controlling Authority proceeds on the footing that the employee was compulsorily retired whereas the order of the Disciplinary Authority is clear that he was dismissed from service. The order of dismissal has not been challenged by the employee and has attained finality. The question as to whether gratuity would be liable to be forfeited or not in spite of the dismissal, would be an issue to be determined by the Appellate Authority after perusing the record. Thus, the Appellate Authority ought to have considered the stand of the Bank without being affected by the findings of the Controlling Authority and ought to have taken into consideration, the documents relating to the dismissal, the show cause notice for the forfeiture of the gratuity and the orders passed forfeiting the gratuity etc., Without considering these documents, the appeal could not have been decided without attributing any reasons.

12. After hearing the parties, this Court is convinced that the Appellate Authority ought to take a relook at the appeal filed by the Bank. The amounts, which have been imposed upon the Bank, are stated to have already been deposited before the Appellate Authority. Thus, no prejudice is caused to the employee.

13. Accordingly, the impugned order dated 13th July, 2020 passed by the Appellate Authority under the Act is set aside. The Appellate Authority shall now consider the appeal filed by the Bank afresh on merits and pass a reasoned order after considering the record and the provisions of law. The Appellate Authority shall also consider the issue of limitation.

14. The writ petition is allowed in the above terms and the matter is remanded back to the Appellate Authority. All pending applications are also disposed of. Considering that the dismissal took place way back in 2012, the

Appellate Authority shall endeavour to conclude the proceedings and pass its order by 31st January, 2021.

PRATHIBA M. SINGH
JUDGE

OCTOBER 9, 2020/*dk/T*