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W.P.A. 78 of 2019

Asis Datta
-vs-
Union of India & Ors.

Mr. Avik Datta,
Syed Julfikar Ali

....for the petitioner.

Mr. D. K. Kundu,
Mr. A. Basu

....for the UCO Bank.

The writ petition pertains to the order passed by the disciplinary authority on conclusion of disciplinary proceeding against the petitioner who is a retired Assistant Manager of Rishra Branch of UCO Bank. During the tenure as an Assistant Manager in the said Branch charge sheet was issued against the petitioner which was preceded by issuance of show cause notice dated 19th May, 2017. By such issuance of letter petitioner was asked to furnish explanation within seven days as to why suitable action should not be taken against him on the allegation that the petitioner authenticated a request being made by the customer for change of registered mobile number not based on proper request in writing from the concerned customer. In receipt of such show cause notice petitioner furnished reply vide letter dated 25th May, 2017 wherein plea was taken on behalf of the petitioner that necessary entry was made by another user relating to alleged change of mobile number of the customer and such entry was verified by the petitioner in the system. It was also stated therein that due to tremendous workload in the bank he had to depend upon the job of the enterer relating to the request of change of mobile number.

Bank authorities having found such reply to the show cause notice unsatisfactory and issued charge sheet dated 13th October, 2017 containing the following articles of charges:-

> "1) Shri Ashis Dutta (EMP No.31476), had failed to take all possible steps to ensure and protect the interest of the Bank and acted in a manner unbecoming of a Bank Officer, which is violative of Regulations 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.
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> 2) Shri Ashis Dutta (EMP No.31476), had failed to

discharge his duties with utmost devotion and diligence which is violative of Regulations 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended."

On receipt of such charge sheet dated 13th October, 2017 petitioner offered reply dated 17th October, 2017 denying allegations levelled against the petitioner and placed reliance on the statement made by the petitioner while offering reply to the show cause notice dated 25th May, 2017. Subsequently, the bank authorities issued supplementary charge sheet dated 23rd October, 2017 containing following three charges:-

"1) Shri Ashis Dutta (EMP No.31476), had failed to take all possible steps to ensure and protect the interest of the Bank and acted in a manner unbecoming of a Bank Officer, which is violative of Regulations 3(1) of UCO Bank Officer Employees'

(Conduct) Regulations, 1976 as amended.

2) Shri Ashis Dutta (EMP No.31476), had failed to discharge his duties with utmost devotion and diligence which is violative of Regulations 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended."

3) Shri Ashis Dutta (EMP No.31476), while performing his official duties had acted otherwise than in his best juegement, which is violative of Regulations 3(3) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended."

Again petitioner was asked to offer his reply within seven days to such supplementary charge sheet. In receipt of such supplementary charge sheet, petitioner offered reply dated 30th October, 2017 whereby he denied his involvement with regard to transactions of two cheques amounting to Rs.4,50,000/- and Rs.5,48,500/- and again placed reliance on his reply to the show cause notice dated 25th May, 2017.

The disciplinary authority having found such reply to the first charge sheet dated 13th October, 2017 and the supplementary charge sheet dated 23rd October, 2017 as not satisfactory initiated enquiry proceedings against the petitioner and the enquiry officer submitted a report dated 14th November, 2017. According to the said enquiry officer first charge was found to be substantiated against the petitioner whereas charge nos. 2 & 3 were found to be not substantiated. Based on the report of the enquiry officer, the Deputy General Manager, being the disciplinary authority issued final order whereby it was observed that the lapses on the part of the petitioner are unintentional without any *mala fide* intend but due to his negligence there is a financial loss to the bank to the tune of Rs.4,50,000/- which cannot be overlooked. Based on such observation, it was finally ordered in terms of the relevant provisions of UCO Bank Officer Employees' (Conduct & Appeal) Regulation, 1976, as amended, to impose penalty of Rs.4,50,000/- which was decided to be recovered from the petitioner. It has been specifically stated in the said final order of punishment that since two other allegations were found to be not substantiated, no penalty was imposed.

Petitioner being aggrieved by such order of punishment preferred statutory appeal which was disposed of by the General Manager, Personnel Services Department, being the Appellate Authority vide order dated 31st January, 2018 thereby upholding the decision of the disciplinary authority and subsequently petitioner preferred review petition which was disposed of vide order dated 11th October, 2018 wherein also the decision of the disciplinary authority was upheld.

Mr. Datta, learned advocate representing the petitioner has questioned the decision of the disciplinary authority dated 29th November, 2017 chiefly on placing reliance on reply letter dated 25th May, 2017 furnished by the petitioner to the show cause notice dated 19th May, 2017 and it has been contended that petitioner acted as verifier only to the extent of request made by the customer of the bank for change of mobile number depending upon the entry being made by the enterer. Therefore, it has been wrongly alleged that the petitioner was responsible for fraudulent transaction of

Rs.4,50,000/- which caused pecuniary loss to the bank. It has also been submitted on behalf of the petitioner since another alleged fraudulent transaction to the extent of Rs.5,48,500/- has been ignored by the disciplinary authority while passing final order of punishment against the petitioner there is no reason to fasten responsibility on the shoulder of the petitioner with regard to the alleged fraudulent transaction of Rs.4,50,000/- by directing recovery from the petitioner, according to the petitioner such direction is erroneous.

It is also contended that the petitioner has made his position quite clear in the letter dated 25th May, 2017. Therefore, based on such letter the disciplinary authority ought not to have initiated the disciplinary proceeding against the petitioner. In addition thereto, petitioner has also thrown challenge to the order of the Appellate Authority dated 31st January, 2018 and the order of the Reviewing Authority dated 16th August, 2018. According to the petitioner, the date on which the Reviewing Authority passed order was holiday in the bank therefore such order of the Reviewing Authority ought not to be allowed to survive.

Per contra, Mr. Kundu, learned advocate representing the bank authorities being the principal respondent has also made his submission based on the letter dated 25th May, 2017 and has contended that since petitioner verified the request for change of mobile number being an officer of the bank and subsequently the alleged fraudulent transaction took place therefore the liability fastened upon the petitioner on successfully concluding the disciplinary proceeding by conducting enquiry is not required to be interfered with by this Court. It is submitted before making authentication the petitioner being the Assistant Manager of the Branch was required to verify the request of the customer properly which has not been done in the present case which resulted in initiation of disciplinary proceeding against the petitioner in terms of the extant provisions, namely, UCO Bank Officer Employees' (Conduct & Appeal) Regulation, 1976. Mr. Kundu has defended the decision making process including the order of punishment of the disciplinary authority dated 29th November, 2017 and the orders of the Appellate Authority dated 31st January, 2018 and the Reviewing Authority dated 11th October, 2018.

This Court has heard the learned advocates representing the parties and perused the relevant documents available on record.

On perusal of the report of the enquiry officer which starts from page 39 of the writ petition, dated 14th November, 2017, it appears that allegation nos. 2 & 3 were found to be not substantiated. Therefore there is no need to dilate on allegation nos.2 & 3. Considering the materials available before the enquiry officer as well as case being presented by the petitioner and the presenting officer, the enquiry officer made following finding on allegation no.1:-

> "During the entire proceedings of enquiry, CO/DR have never denied the fact of having verified the change in mobile number in system.
>
> CO as an Officer should have ensured additional caution and verification in system entered by other officials based on an undated letter for changing phone number of the customer.
>
> There is negligence of duty though there is no mala-fide intention on the part of the CO.
>
> Allegation No.1 stands substantiated against the C.O.".

On conjoint reading of the findings of the enquiry officer on allegation no.1 as well as explanation given by the petitioner in his letter dated 25th May, 2017, it appears to this Court that the enquiry officer proceeded on the basis of admission made by the petitioner while offering reply to the show cause notice as contained in such letter dated 25th May, 2017 wherein it has been unequivocally admitted by the petitioner that he acted as a verifier while authenticating the request made by the customer for change of mobile number.

This Court has also perused letters dated 17th October, 2017 and 30th October, 2017 whereby replies were furnished by the petitioner to the charge sheet dated 13th October, 2017 and the subsequent supplementary charge sheet dated 23rd October, 2017. In these two letters being replies to the charge sheet excepting bare denial only other thing which has been contended by the petitioner is reliance on the letter dated 25th May, 2017 furnished by the petitioner while responding to the show cause notice of the bank authorities. In such letter dated 25th May, 2017 as it has been discussed above and at the cost of repetition it is found that the petitioner admitted that he acted as a verifier while authenticating the request for change of mobile number.

In view of these facts as alluded above it is pellucid that there is no anomaly being found in the finding of the disciplinary authority while coming to the conclusion that allegation no.1 as contained in the charge sheet is partly proved. Based on such finding the disciplinary authority passed on an order to the extent of recovery of Rs.4,50,000/- from the retiral dues of the petitioner since petitioner retired on superannuation on 30th November, 2017.

Since this Court has found that the decision taken by the disciplinary authority is not erroneous and it appears that a lenient view has been taken by the disciplinary authority, the decision of the Appellate Authority and decision taken by the reviewing authority subsequently need not be discussed and examined elaborately to find out the illegalities are at all existing therein or not.

It is trite law that the writ court while examining the decision of the disciplinary authority as well as the findings made by the enquiry officer in the connected enquiry proceeding cannot act as a fact finding authority or an Appellate Authority and it can only interfere if a case is made out that finding of the authority is based on no evidence or perverse. The exercise of court of judicial review cannot travel beyond the above self-imposed limitation and ought not to enquire whether the evidence is acceptable or not or whether the evidence is adequate or not. In this regard reliance is placed on the judgment of the Apex Court, reported in (2015) 3 SCC 101 (General Manager (Operations) State Bank of India & Anr. –vs- R. Periyasamy)

In view of above conspectus, this Court does not find any merit in this writ petition and the same stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)