

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.12039 of 2004

(An application under Articles 226 & 227 of the Constitution of India).

Jagannath Behera

....

Petitioner

-versus-

Utkal Grameen Bank & Others

....

Opposite Parties

For Petitioner

:

Mr. D. Lenka, Advocate

For Opposite Parties

:

Mr. P.V. Balkrishna, Advocate

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING: 11.10.2022

DATE OF JUDGMENT: 11.10.2022

V. Narasingh, J.

1. Heard Mr. D. Lenka, learned counsel for the Petitioner and Mr. P.V. Balkrishna, learned counsel for the Opposite Parties.
2. The Petitioner, who was working as Scale-1 Officer of the erstwhile Utkal Grameen Bank, Semiliguda, has assailed the order passed by the Disciplinary Authority dated

22.05.2001 at Annexure-10 whereby he was awarded the punishment of degradation to lower stage in his incremental scale i.e. Rs.2100/- + allowances and treating the suspension period “as not on duty”.

3. Assailing the same, the Petitioner preferred an appeal to the Board and the Appellate Authority by order dated 03.12.2003 at Annexure-12, while affirming the order passed by the Disciplinary Authority modified the punishment by “granting two more increments” on the present basic pay scale of the Petitioner, while not interfering with the direction to treat the suspension period not as on duty.

4. Assailing the disciplinary authority order & appellate order at Annexure-10 & 12 respectively, the present Writ Petition has been filed.

5. It is apt to note here that during pendency of the litigation, the status of Koraput Panchbati Gramya Bank where the Petitioner served during the period when he was proceeded against has amalgamated with Utkal Grameen Bank and the Disciplinary Authority as well as the Appellate Authority post amalgamation have been arrayed as Opposite Party Nos.2 and 3.

6. It is submitted by the learned counsel for the Petitioner that the finding of the Enquiry Officer vis-à-vis each of the charge is not based on the cogent materials inasmuch as the specific defence vis-à-vis each of the charge has not been considered in its proper perspective. Hence, the very imposition of the punishment by the Disciplinary Authority, after consideration of his show cause was shockingly disproportionate.
7. Assailing such order, the Petitioner preferred an appeal and the memorandum of appeal is at Annexure-11.
8. On a bare perusal of the memorandum of appeal, it can be seen that the Petitioner has preferred a detailed appeal adverting to each of the charges and finding of the Enquiry Officer.
9. As noted above, the order of the Appellate Authority dated 03.12.2003 is at Annexure-12.
10. For convenience of ready reference the order passed by the Board in exercising the appellate power is extracted hereunder.

*“The Board has carefully
considered the appeal dated
27.06.2021 preferred by Sri*

Jagannath Behera, O.S.I. against the penalty imposed by the Chairman and Disciplinary Authority in terms of an order dated 22.05.2021 in connection with fraud at Bank's Semiliguda branch amounting to Rs.21,07,300.00

2) The Board has perused specially the following mentioned papers/documents relating to the case and other relevant papers.

- i. Charge sheet & reply*
- ii. Defence brief,*
- iii. Prosecution brief*
- iv. Enquiry Findings*
- v. Speaking order*
- vi. Reply to show cause*
- vii. Legal opinion*
- viii. Final punishment order*
- ix. Officer order by Sri A. Nayak, Branch Manager*
- x. Representation of Sri Behera for not to appoint Sri P.K. Sahoo as Enquiry Officer*
- xi. Legal opinion on Sri P.K. Sahu, Enquiry Officer*
- xii. FIR and appeal made by Sri Behera*

3) The observation of the Board after going through the above records is as under:-

“The punishment awarded by the Disciplinary Authority is upheld till date”

4) In view of the foregoing and considering the gravity of misconduct the Board has decided to grant two more stages on his present basic pay scale with effect from the date of decision i.e. from 03.12.2003.

Signed by :

Asst. General Manager, (RRBs),
SBI, LHO, Bhubaneswar

Asst. General Manager, NABARD,
Koraput

Asst. General Manager, RBI,
Bhubaneswar

Asst. General Manager, SBI,
Regional Office, Jeypore

Project Director, D.R.D.A., Koraput
Shri Kailash Hotel, Member
Director

N.B.:- Board means the Board of
Directors of the Koraput
Panchabati Gramya Bank as above

*except the Chairman, Koraput
Panchabati Gramya Bank.”*

11. On a bare perusal of the order of the Appellate Authority, it can be seen that in Paragraph-3, the Appellate Authority has upheld the punishment awarded till date but in the same breath had decided to grant increment of two more stages on his present basic pay scale of the incumbent petitioner from the date of decision i.e. from 03.12.2003 and it is also stated in the said appellate order that “the Board is of the opinion that the appeal merits consideration.”
12. On a bare perusal of the order of the Appellate Authority, it can be seen that the said authority proceeded on the basis that the fraud at the Bank’s Semiliguda Branch in which the Petitioner was working was amounting to Rs.21,07,300/-(Rupees twenty one lakh seven thousand three hundred).
13. It is on record that so far as Semiliguda Branch where the Petitioner served, the amount involved is Rs.3,76,000/- (Rupees three lakh seventy six thousand) and Rs.2,35,000/- (Rupees two lakh thirty five thousand), which related to two advices which have been relied on by the Bank authorities as

PEX-5 & 7 dated 11.04.1998 and 19.05.1998 respectively in the Departmental Proceeding.

14. It is the contention of the learned counsel for the Petitioner that the manner of exercise of the appellate powers by the Opposite Party authorities is ex-facie perfunctory. The appellate order suffers from the vice of being a non speaking one and hence on the said ground alone, the case at hand merits consideration of this Court.

15. Per contra, learned counsel Mr. P.V. Balkrishna appearing for the Utkal Grameen Bank submits that the contours of interference in a Disciplinary Proceeding are well established and it is not open for this Court in exercising writ jurisdiction to re-evaluate the materials on record. It is also stated with vehemence that since the Petitioner was an official of a Bank, greater care and caution is expected from him and relying on the detailed finding on the enquiry report on each head of the charge, it is submitted that the Petitioner's conduct as an official of the Bank does not meet the minimum standard and it is submitted that in fact the Bank authorities have been lenient in imposing the punishment. Hence, the case at hand does not come within the category of the exceptional cases to

warrant any interference and in this context, learned counsel has relied on the judgment of the apex Court in the case of ***B.C. Chaturvedi Vs. Union of India and Ors.*** reported in ***AIR 1996 SC 484*** more particularly paragraph-12 thereof, wherein it has been clearly laid down that judicial review is not appeal from a decision but a review of the manner in which such decision has been made and the Apex Court has cautioned that the Court/Tribunal in its power of judicial review cannot act as an Appellate Authority to re-appreciate the evidence and to arrive at its own independent finding on its evidence.

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“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules

of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would

have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

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16. Placing reliance on the aforesaid Judgment of the Apex Court by Mr. P.V. Balkrishna, learned counsel for the Utkal Grameen Bank reiterates his submission that since there is no irregularity in the decision making process which has come to fore, there is no scope to interfere with the same. More so, when punishment imposed, by no stretch of imagination, can be held to be shockingly disproportionate.
17. This Court had an occasion to peruse the appellate order which has been extracted hereinabove. It needs no emphasis that the Appellate Authority while discharging its function has to apply its mind and consider each of the grounds as raised. But on a bare perusal, it can be seen that the Appellate Authority has abdicated that responsibility and merely referred to the documents in paragraph-2 of its order and arrived at the finding that the punishment awarded is

upheld till date and while doing so in the same breath has granted two more increments.

18. Such approach of the Appellate Authority baffles the conscience of this Court and this Court is impelled to hold that the order of the Appellate Authority does not pass the test of reasonableness.

19. It is as unfathomable as an “inscrutable face of the sphinx”.

20. It is worth reiterating that the Appellate Authority proceeded under the assumption that the fraud at the Bank’s Similiguda Branch where the Petitioner worked was to the tune of Rs.21,07,300/-(Rupees twenty one lakh seven thousand three hundred), but it is clearly stated by the finding of the Enquiry Officer in respect of charge 2 and 3 that the amount involved is to the tune of Rs.3,76,000/-(Rupees three lakh seventy six thousand) and Rs.2,35,000/- (Rupees two lakh thirty five thousand).

21. The finding of the Enquiry Officer in this regard at page-69 of the brief which is the part of the enquiry report is quoted herein below for appreciation.

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“As such the Bank is saddled with a loss of the sum total of all the above mentioned advices amounting to Rs.21,07,300/- in which two advices that are PEX-5 & PEX-7 dated 11.04.1998 and 19.05.1998 for Rs.3,76,000/- and Rs.2,35,000/- respectively have been passed by the C.O. as established in respect of charge No.2 & 3 respectively of the charge sheet against the C.O. All the above mentioned seven number of advices have been fraudulently prepared by a group in which Sarbashree G.Srinivas Rao, Prop. K.P.Engineering Works, Semiliguda and Sri Prakash Sethy alias Deepak Kumar are involved as revealed in the enquiry proceedings against the C.O.”

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22. On a close scrutiny of the finding of the Disciplinary Authority it comes to the fore that all seven numbers of advices were fraudulently prepared by a group of which only two i.e PEX-5 & 7 related to Semiliguda Branch where the present Petitioner was working. Appellate Authority proceeded under the assumption that the entire fraud is attributed to the

Semiliguda Branch which only fortifies non application of mind by the Appellate Authority.

23. There is no cavil that the powers of this Court in interfering with an order passed in a Disciplinary Proceeding is well outlined and this Court cannot substitute its opinion for that of the Disciplinary Authority when the decision making process is in tune with well established norms of natural justice and there are no patent procedural infirmities. But on consideration of the Appellate Order, this Court is of the firm view that the Appellate Authority has failed to discharge the onerous duty enjoined upon it and in fact allowed its judgment to be clouded by irrelevant material and the relevant materials which had a bearing on the alleged complicity of the Petitioner were not taken into account.

24. One of such is the stand taken by the Petitioner in the Writ Petition in paragraph-22 which is quoted hereunder.

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“That without prejudice to the above submissions this deponent humbly says and submits that undisputedly suspicion arose in the minds of the petitioner and other employees of the Semiliguda Branch as regards to the spelling

of KUJENDRI which was wrongly spelt as KUJINDRI on the fact of M.T. advice No. 63951 and 63952, dated 4.06.1998 and 6.6.1998 for Rs.4,75,000/- and Rs.4,22,375/- respectively. Immediately the matter was referred to the Head Office over telephone and Head Office reported that there were no such transfers from KUJENDRI Branch. On further verification of earlier credits aggregation, Rs.21,07,300/- afforded to current Account No.229 of Mr. Prakash Shetty on account of M.T.S. received from Almenda, Bandhugaon Dasmantapur and Kakirigumma Branches. Had there been any malafide intention of the petitioner the matter would not have been reported to Head Office when suspension arose in the mind of the petitioner and staff as regards spelling of Kujendri Branch.

It is further submitted that the petitioner was the passing officer for two M.T.S. at the relevant time in the absence of the regular Branch Manager. Prior to passing of vouchers by the petitioner similar advices were passed by the regular Manager of the Branch. Therefore there was no occasion to suspect anything more particularly Sr. G. Srinivas Rao, was a valued

customer of the Branch who had introduces Prakash Shetty.”

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25. It is apt to note that in response to the same in the stand of the Bank in paragraph 14 of the counter, extracted hereunder, which, has a great bearing on the point at issue, in the considered view of this Court, runs thus;

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*“That with reference to para-22 and 23 of the Writ Petition it is submitted that as put forth by the (C.O.) petitioner he is having detected the wrongly spelt out branch name and the subsequent information of the same to Head Office is of course a fact. **The CO’s (petitioner) clarification of not having any malafide, has never been disputed anywhere by the Bank.** The entire gamut of Disciplinary Proceedings right from the first show cause (charge sheet) till the final order of the Disciplinary Authority including disposal remarks by the Board in reply to the appeal by the CO, entirely deals with the negligence aspect of the CO. Lapses in respect of the opening of the account without ascertaining the genuineness or the customer (P. Sethy) who*

was introduced as a business man but surprisingly it transpired during enquiry that he is a student of Sunabeda Public School. Moreover the said person P. Shetty who was introduced as a business man but found out to be student, never goes by the name P. Sethy but as Deepak Kumar.”

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26. It is thus admitted by the Bank authority that petitioner is in fact one of the employees who reported the matter for which the follow up against the cartel was initiated.

27. Hence, in the peculiar factual matrix of the present case, this Court is persuaded by the submission of the learned counsel for the Petitioner that the case at hand merits interference and accordingly, keeping in view the manner in which the Appellate Authority exercised its jurisdiction, this Court feels that interest of justice and equity would be subserved, if the matter is relegated to the level of Appellate Authority to take a fresh decision regarding the punishment imposed against the Petitioner, keeping in view the submission in the Writ Petition along with the stand of the Bank as quoted above.

28. Since the Petitioner has retired in the meanwhile such exercise of consideration by the Appellate Authority Board be

made within a period of four months from the date of receipt/production of copy of this Judgement.

29. Accordingly, the Writ Petition stands disposed of. No costs.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 11th October, 2022/Ayesha

