

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

**CM-63-LPA-2019 in/and
LPA-304-2018
Decided on : 27.07.2022**

UCO Bank & others

... Appellants

Hari Ram Anthala

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present:- Mr.Shekhar Verma, Advocate, for the appellants.
Mr.R.K.Malik, Sr.Advocate
with Mr.S.K.Hooda, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-63-LPA-2019

Application has been filed for vacation of ex-parte interim order dated 26.02.2018.

With the consent of counsel for the parties, the main appeal, which is on the Regular Board at Sr.No.1198, is taken on Board.

LPA-304-2018

Consideration in the present appeal is to the order passed by the learned Single Judge on 11.01.2018 in CWP-12802-2009 filed by the respondent. The learned Single Judge has found that the disciplinary authority failed to consider the petitioner's reply on the enquiry report which he had submitted on 03.09.2008 (Annexure P-6) within the time stipulated and therefore, there was total non-application of mind by the said authority.

The appellate and reviewing authorities having also failed to appreciate the contentions and in such circumstances the matter was

remanded to the disciplinary authority to pass a fresh order after due consideration of the petitioner's plea, which had been submitted on 03.09.2008. The said exercise was to be completed within a period of 3 months. Resultantly, the order of compulsory retirement and the consequential orders of dismissal of appeal and review were set aside with the condition that the employee be treated as if he was under suspension from 05.09.2008 till 30.04.2017, which was the date of his retirement. The appellant-Bank was directed to pay the subsistence allowance for the said period and pass suitable order regulating suspension order within a period of 6 months.

A perusal of the paperbook would go on to show that the reasoning which has been given by the learned Single Judge does not suffer from any infirmity. The tearing hurry with which the Bank proceeded with is pertaining to the charge-sheet dated 15.04.2008 (Annexure P-1) regarding which the petitioner had submitted reply on 19.04.2008 (Annexure P-2) which had resulted the enquiry officer to submit report dated 28.07.2008 (Annexure P-5). The same would show that the proceedings started on 26.05.2008 and were held on day to day basis and concluded on 30.05.2008. The employee who was serving at District Bhagalpur (Bihar) had raised objections against the enquiry report that was sent by the Disciplinary Authority from Zonal Office Chandigarh vide letter No. CZO/SD/2008-09/1180 dated 30.07.2008, through Zonal Officer, Bhagalpur (Bihar), which had been received by

the employee only on 28.08.2008. The same has also been noticed by the Appellate Authority in its order dated 26.12.2008 (Annexure P-9). The factum of supply of enquiry report on 28.08.2008 and the respondent-employee's reply dated 01.09.2008 thereto, submitted on 03.09.2008 was within the stipulated period of 7 days from the date of receipt of the said report, through the Branch Manager, Sultanganj Branch, District Bhagalpur (Bihar) along with 22 documents therewith (Annexure P-6), which cannot be disputed by the appellant-Bank.

The disciplinary authority being the Deputy General Manager sitting in the Zonal Office, Chandigarh, 1500 KMs away came to the conclusion that the comments of the charged officer had not been received, though the enquiry report had been sent on 30.07.2008 but received only on 28.08.2008 and the reply had to be submitted within 7 days of the receipt of the report. Resultantly, he passed the order of compulsory retirement on 05.09.2008 without waiting for the response. In the appeal filed on 15.09.2008 (Annexure P-8), specific plea was taken regarding this aspect that he had submitted the reply with proper receipt of Bank Manager, Sultanganj Branch, District Bhagalpur along with all comments but inspite of that the order had been passed compulsorily retiring him.

Unfortunately, the Appellate Authority, in its order dated 26.12.2008 (Annexure P-9) while dismissing the appeal noticed this aspect but did not deal with it and proceeded to deal with the merits and

misconduct that the employee had filed various suits against the Bank which was the matter of charge-sheet. Apparently, the factum that the employee was posted at Sultanganj, District Bhagalpur, Bihar and the disciplinary authority was based at Chandigarh did not carry any weight with the Appellate Authority. The position remained the same in the review wherein also the same was dismissed on 18.06.2009 (Annexure P-11) whereby the penalties imposed had been upheld, merely on the ground that no new material or evidence had been submitted which could not be produced or was not available at the time of passing of the order by the Appellate Authority which could have resulted in changing the nature of the case.

The basic aspect of consideration of the reply wherein the plea taken was that no evidence had also been recorded by the Enquiry Officer before the disciplinary authority who had to consider the same was all lost sight of. In total haste, the Bank had proceeded in charge sheeting the employee on 15.04.2008 and passing the order compulsorily retiring the respondent by 05.09.2008.

In such circumstances, we are of the considered opinion that the learned Single Judge did not err in any manner while directing that the disciplinary authority should reconsider the issue by taking into consideration the reply. The consequential benefits which necessarily flow from an illegal order being set-aside, the Bank has to suffer for it and therefore, it cannot have any grouse that any monetary benefits will

accrue to the employee which is apparently on account of the Bank's own over eagerness which would be clear from the above sequence of events.

In such circumstances, we do not find any ground to interfere in the order passed by the learned Single Judge and the present appeal is accordingly dismissed.

(G.S. SANDHAWALIA)
JUDGE

July 27, 2022
sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No