Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Circuit Bench at Jalpaiguri

Constitutional Writ Jurisdiction

Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

WPA 570 of 2021

Sri Sujan Roy
-Versus-
Uttar Banga Kshetriya Gramin Bank & Ors.

For the Petitioner	**: Mr. Pijush Chaturvedi,** **Mr. K.M.Hossain,** **Mr. Debajit Kundu.**
For the Respondents	**: Mr. Chitra Bhanu Gupta,** **Mr. Srijit Halder.**
Heard & Judgment On	**: 10th February, 2023.**

Bibek Chaudhuri, J.

The writ petitioner is the Assistant Manager of Uttar Banga Kshetriya Gramin Bank, Dhupguri Branch. A disciplinary proceeding was conducted on the basis of the following charges:-

"Charge No. 1:

Sri Sujan Roy, Assistant Manager, Dhupguri Branch remained on unauthorized absence from his duty for more than 1060 days disobeying the service conduct.

Charge No. 2:

Sri Sujan Roy, Assistant Manager, Dhupguri Branch has availed 5(five) loans from bank and 1(one) loan was availed by his wife Smt. Rajashree Roy from bank and debit balances are outstanding in the loan accounts which have turned to NPA for non-payment installments due".

By an order dated 22nd November, 2014 the General Manager informed that he would act as the Disciplinary Authority as per Uttar Banga Kshetriya Gramin Bank Services (amendment) Regulation, 2013. Disciplinary proceeding was duly conducted against the petitioner and the enquiry officer found him guilty of both the counts and placed the record before the General Manager, the Disciplinary Authority. The Disciplinary Authority accepted the finding of the Enquiry Officer and passed an order of removal from service dated 17th April, 2015. The petitioner preferred a departmental appeal but the said appeal was also turned down by order dated 31st August, 2015.

By filing WP 16907 (W)/2006 the petitioner challenged the final order of his removal from service by the Appellate Authority dated 5th September, 2015. By an order dated 3rd October, 2018 a Coordinate Bench quashed and set aside the order dated 31st August, 2015 and the consequential order dated 5th September, 2015 passed by the Appellate Authority. The Court remanded back the matter to the Board of Directors of the respondent no. 1/Bank to designate an appropriate Appellate Authority without Mr. P. Anup Kumar to dispose of the appeal filed by the petitioner as expeditiously as possible.

The aforesaid order was passed because of the fact that the said P. Anup Kumar submitted the charge-sheet to the petitioner and again acted as Appellate Authority in the disciplinary proceeding. The petitioner being aggrieved against the order passed in the aforesaid writ petition preferred an appeal which was registered as FMA 635/2019. In the said appeal, the order of the Hon'ble Single Bench was affirmed and the Appellate Authority was directed to release the admissible retiral dues of the writ petitioner/appellant pending disposal of the appeal.

Subsequently on 31st March, 2020 the Appellate Authority designated by the Board of Directors of the respondent no. 1/Bank dismissed the petitioner's appeal and confirmed the order of punishment passed by the Disciplinary Authority without addressing the issues raised in the appeal. The Appellate Authority also did not consider that entire amount of dues towards loan was already liquidated by the petitioner even before the appeal was being adjudicated upon by the designated Appellate Authority.

Mr. Chaturvedi, learned Advocate for the petitioner submits before me that charge on count no. 1 i.e., unauthorized absence by the petitioner is vague, indefinite and does not tantamount to misconduct. The Disciplinary Authority did not know at the time of formulation of charge the period of alleged unauthorized absence by the petitioner. In the initial charge-sheet, it was stated by the Disciplinary Authority that the petitioner was absent for 1060 days; Subsequently by a corrigendum it was reduced to 1025 days; thereafter by another corrigendum the period of unauthorized absence was stated to be of 986 days and finally it appears that the petitioner was absent unauthorizedly for 580 days. Said absence was already treated by the higher Authority of the petitioner as leave without pay.

It is submitted by the learned Advocate for the petitioner that the petitioner was appointed in the post of Field Supervisor as a probationer on 28th December, 1982. Subsequently, he was promoted to the post of Assistant Engineer in course of time. Disciplinary action was initiated against the petitioner only on 22nd December, 2013. When it appears that the petitioner remained absent for 580 days. It is presumed that such absence was made by the petitioner during course of his service from the date of his appointment. However, the Department did not take any action immediately when he remained absent from his duties unauthorizedly. It took about 31 years to initiate the disciplinary proceeding against the petitioner. There is no satisfactory explanation for inordinate delay in issuing the charge-sheet against the petitioner. In view of such inordinate delay, it is unfair to permit the departmental enquiry to be proceeded with. In support of his contention Mr. Chaturvedi refers to a decision of the Hon'ble Supreme Court in ***State of Madhya Pradesh –Vs.- Bani Singh & Anr., 1990 (Supp.) SCC 738***. The decision of Bani Singh with regard to the irregularity in conducting the disciplinary proceeding due to delay as held in Bani Singh (Supra) is reiterated by the Hon'ble Supreme Court in paragraph 17 of ***M.V. Bijlani –Vs.- Union of***

India & Ors., (2006) 5 SCC 88. It is submitted by the learned Advocate for the petitioner that the Enquiry Officer failed to appreciate the inaccuracy and indefiniteness in framing of charge no. 1 and also did not admit the petitioner's documents which would signify that the leave applications were made contemporaneously.

With regard to charge no. 2 it is submitted by Mr. Chaturvedi that non-payment of overdue does not amount to misconduct. Circular dated 11th November, 2007 provides for procedure to be adopted for recovery of staff guaranteed loan. Furthermore, no proceeding for recovery of such dues was initiated against the petitioner before the initiation of the departmental proceeding. The amount was never shown to be overdue and finally the entire amount of dues were liquidated by the petitioner which was taken note of by the Appellate Authority. Thus, it is argued by the learned Advocate for the petitioner that there was patent irregularity and illegality of the Appellate Authority and the order of the Appellate Authority is liable to be set aside. In support of his contention he refers to the following decisions :-

"***In Re: Dewaki Nandan Sharma, (2001) 5 SCC 340;***

Ashim Kumar Sarkar –Vs.- Union of India & Ors., 2011(1) WBLR Cal 801;

Chel Singh –Vs.- MGP Gramin Bank Pali & Ors.(Civil Appeal No. 1018/2014), judgement delivered on July 7, 2014."

Learned Advocates for Uttar Banga Kshetriya Gramin Bank and other respondents, on the other hand, submits that Uttar Banga Kshetriya Gramin Bank Services (Amendment) Regulation, 2013 has been framed in exercise of the power conferred by Section 30 of the Regional Rural Banks Act, 1976. It is further submitted by the learned Advocate for the respondents that the petitioner was removed from service for his unauthorized absence for about 540 days or 986 days as the case may be and secondly he availed five numbers of loans and failed to repay within time and thereafter compelled the Bank to close the said loan account as NPA. The petitioner has challenged the authority of the Enquiry Officer to conduct the enquiry in the disciplinary proceeding. Rule 41 of the above-mentioned Regulation clearly states that the competent Authority may by a general or special order in writing delegate to an officer who is in a higher scale to the officers against whom proceeding is instituted. The petitioner was an Assistant Manager while he was removed from service. In the enquiry proceeding the presenting officer was the Manager (scale II) and the enquiry officer was a Senior Manager (scale III). Therefore, the enquiry was conducted strictly in accordance with the above-named Regulation. Since the petitioner was the Assistant Manager, charge-sheet in his case was issued by the Chairman/Disciplinary Authority.

It is further submitted by the learned Advocate for the respondents that the similar issue as to whether submission of charge-sheet against the petitioner and removal from service was illegal or not has already been adjudicated in WP No. 16907 (W)/2016. By virtue of the said order, the decision of the Appellate Authority was quashed and set aside and the matter was remanded back to the Board of Directors to designate an appropriate Authority except Mr. P. Anup Kumar to dispose of the matter in accordance with law. The Appellate Authority duly constituted by the Board of Directors heard the appeal of the petitioner afresh and accepted the punishment imposed by the Disciplinary Authority. At this stage, the petitioner cannot claim reappreciation of his case.

Having heard the learned Advocates for the parties and on careful perusal of the entire materials-on-record as well as the decisions cited by the learned Advocate for the petitioner, I would like to record at the outset that indisputably petitioner is governed by Uttar Banga Kshetriya Gramin Bank Services (Amendment) Regulation, 2013. Rule 39 of the said Regulation provides for penalty. Removal from service which shall not be a disqualification for future employment is one of the major penalties. It is stated in Rule 39 that an officer or employee who commits a breach of the Regulations or who displays negligence, inefficiency or indiligence or who commits acts detrimental to the interest of the petitioner or in conflict with its instruction, or who commits a breach of discipline or is guilty of any other misconduct, shall be liable for anyone or more penalties. The penalties are divided into two major heads, viz., (a) minor penalty and (b) major penalty. The petitioner suffered major penalty for the charges which is said to have been proved against him.

At the risk of repetition, it is stated that Chapter VI of the Regulation deals with leave and joining time. Various kind of leave may be availed of by an officer or an employee of the Bank as per Rule 55 of the Regulation. They are (a) casual leave (b) privilege leave (c) sick leave (d) extraordinary leave (e) special casual leave and special leave (f) maternity leave and (g) paternity leave. Regulation 63 states that extraordinary leave may be granted to an officer or employee when no other leave is due to him and when having regard to his length of service, sick leave is not considered by the competent authority. Sub-Rule or Section 63 states that the duration of extraordinary leave to be granted to an officer or an employee shall not exceed 90 days on any occasion and 360 days during the entire period of service provided that in exceptional circumstances, the Chairman may, with the approval of the Board, grant extraordinary leave up to the total period of 720 days to an officer or employee.

I have carefully gone through the order passed by the Appellate Authority. On careful perusal of the order passed by the Appellate Authority this Court does not find any discussion as to whether petitioner’s unauthorized absence was referred to the Chairman for his consideration as to whether he with the approval of the Board under the facts and circumstances of the case could grant extraordinary leave up to a total period of 720 days to the petitioner when the period of unauthorized absence is stated to be 540 days.

In view of such finding arrived at by this Court this Court is of the view that the matter should be remanded back to the Appellate Authority to decide the limited issue as to whether proviso to Sub-Rule (2) of Rule 63 of the Regulation was considered by the Appellate Authority or not. On due consideration of such proviso, the decision that may be taken by the Appellate Authority shall be held to be final.

With regard to petitioner's another prayer, it is submitted by the learned Advocate for the respondents that the petitioner has already been paid all admissible retiral benefits.

However, when the case is remanded to the Appellate Authority for decision, the Appellate Authority shall consider if any other dues are payable to the petitioner or not.

The instant writ petition is accordingly disposed of with the above observation on contest, however, without any cost.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

[Bibek Chaudhuri, J.]

Srimanta
A.R. (Ct.)