IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8058 of 2018

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Dhirendra Kumar S/o Late Kapildev Singh, Resident of Village Sabnima, P.S.- Athmalgola, District- Patna.

... ... Petitioner/s

Versus

1. The Chairman Cum Managing Director, U C O Bank, Head Office-3-4, DD Block, Sector-1, Salt Lake, Kolkata.
2. The General Manager and Circle Head, UCO Bank Circle Office, 4th Floor, Block-A, Maurya Lok Complex , New Dak Bungalow Road, Patna
3. The Zonal Manager ,Sona Jageshwari Complex ,Traffic Chowk, Begusarai.
4. The Assistant General Manager, UCO Bank, Zonal Office, Begusarai.
5. The Chief Manager, UCO Bank, Ranchi Branch, Sainik Bazar, Main Road, Ranchi.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ritesh Kumar, Advocate
For the Respondent/s : Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 30-04-2024

Heard learned counsel for the petitioner and learned counsel for the respondent-Bank.

2. The present writ petition has been filed for setting aside the order dated 31.03.2011 passed by the Disciplinary Authority (the Assistant General Manager, UCO Bank, Zonal Office, Begusarai). Further for setting aside the order dated 10.03.2015 passed by the Appellate Authority (the General Manager-cum-Circle Head, Patna) communicated to the petitioner vide letter Nos. RZO/HRM-VIG/2011-12/01

dated 02.04.2011 and letter No.RZO/PSD/MISC/2015-16/104 dated 14.05.2015 respectively, by which punishment of compulsory retirement has been imposed.

3. Learned counsel for the petitioner submits that petitioner was appointed as Clerk-cum Cashier in the respondent-bank with effect from 22.10.1983. His services were confirmed on 11.03.1985 with effect from 01.08.1984. In the year 1985, he was promoted to the post of Head Cashier and in the year 1989 he was promoted to the post of Chief Cashier in the JMG Scale-I.

4. Learned counsel for the petitioner submits that petitioner was posted from 23.07.2003 to 31.10.2007 at Gowasi Branch, Purnea. A show cause notice was served by the respondent-bank to him on 13.02.2009. In response, petitioner has filed his reply on 29.04.2009. The respondent-bank on being dissatisfied with his reply has decided to initiate a disciplinary proceeding against him. In this regard article of charge has been issued to the petitioner vide letter dated 02.02.2010. Petitioner has filed reply on 12.03.2010. The Enquiry Officer has submitted its enquiry report on 27.07.2010 in which he found all article of charges five in numbers proved against him. Thereafter, the Disciplinary Authority has

forwarded the enquiry report to the petitioner and directed to submit his comment. The petitioner has submitted his comment vide his letter dated 27.09.2010 and, thereafter, the final order has been passed by the Disciplinary Authority on 12.10.2010 imposing the punishment of compulsory retirement from the bank service. In addition to that the basic pay of the petitioner was reduced by one stage in the time scale of pay for a period of two years with immediate effect. It was further directed to the petitioner that the petitioner will not earn increments of pay during the period of representation and on expiry of this period the representation will have effect of postponing the future increments of pay.

5. Learned counsel submits that being aggrieved and dissatisfied with the order passed by the Disciplinary Authority the petitioner has preferred appeal before the Appellate Authority and the Appellate Authority uphold the penalty granted by the Disciplinary Authority. Thereafter, the petitioner has preferred the present writ petition.

6. Learned counsel for the petitioner fairly submits that he is not challenging the procedure adopted in the disciplinary proceeding against him; rather he is just challenging the disproportionate punishment imposed to the

petitioner in the light of the judgment passed by the Hon'ble Supreme Court of India in the case of **Union of India and others Vs. P.Balasubrahmanayam** a reportable judgment passed on 04.03.2021 in Civil Appeal Nos. 3592-3593 of 2020, in which it has been found that considering the findings of procedural lapses against the respondent the appropriate punishment could only be a minor penalty and not a major penalty keeping in mind that anyone can make mistakes and the consequence of mistake should not be unduly harsh.

7. Learned counsel for the petitioner submits that petitioner has been paid his provident fund due to the tune of Rs. 7,37,119.22 vide letter no. 30.03.2012. The provident fund contribution of the bank has not been paid to the petitioner. Counsel submits that after passing the final order the petitioner is entitled for payment of entire amount of provident fund including the contribution of bank.

8. Learned counsel for the UCO Bank submits that in the present departmental proceeding there is absolutely no procedural lapse and the punishment imposed upon the petitioner is basically not harsher and disproportionate; rather a liberal attitude had been adopted by the Disciplinary Authority, which shall be relevant from the article of charge imputed

against the present petitioner and his reply in response of those charges. The allegation of statement made against the present petitioner was that he had indulged in various acts of comissions and omissions in course of duty while functioning as Branch Manager of Gowasi Branch from 20.03.2003 to 31.10.2007. The article of charges are as follows:-

> "I. Shri Kumar had most unauthorizedly granted 65Term/Demand loans, allowed Overdrafts/overdrawing in 25 Current A/cs even when his lending powers were withheld by the Controlling Office, and issued 11 bank guarantees for Rs. 1.21 crores, either beyond lending powers or without lending powers. Thus Shri Kumar failed to discharge his duties with utmost integrity, honesty and devotion in protecting bank's interest which is violative of Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.
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> II. Shri Kumar had concealed his above acts of indiscriminate & unauthorized financing and did not furnish the scheme-wise advance portfolio details as demanded by RO Begusarai. Thus Shri Kumar did not maintain good conduct and discipline and did not pay

proper attention to his superiors' instructions which is violative of Regulation 3(2) of UCO Bank Officer. Employees' (Conduct) Regulations, 1976 as amended.

III. Shri Kumar had, most unauthorizedly, allowed overdrawing in the cash credit a/c of M/S Baba Construction to the extent of Rs.26.56 lacs and additionally issued a revolving letter of credit to the tune of Rs.39.96 lacs for them. Further in the loan a/c of M/S Chandra Prakash, he issued BGs in excess by Rs.4.46 lacs over the BG limit and also did not obtain full security as per terms of sanction stipulated by RO Begusarai. He paid 135 cheques (OBCs) of sundry parties to the debit of IBCN Paid a/c against the guidelines of debiting IBCN Paid a/c. He has also issued Solvency Certificate to M/S Baba Construction for Rs.1.50 crores which was beyond his power. Thus Shri Kumar did not act in his best judgment with the sole intention to cause wrongful gain to the parties which is violative of Regulation 3(3) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.

IV. Shri Kumar had allowed excess drawing in his own as well as in

> other staff TOD a/cs which is most unbecoming of a bank officer and violative of Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.
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> V. Shri Kumar had most indiscriminately & recklessly allowed overdrafts in 15 Savings Bank a/cs to an amount as high as Rs.62.30 lacs in one a/c. Thus Shri Kumar failed to discharge his duties with utmost integrity, honesty and devotion in protecting bank's interest which is violative Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended."

9. The reply of article of charge was accepted by the Disciplinary Authority as such all five charges were found proved in the enquiry report. Thereafter the Disciplinary Authority provided an opportunity and then only final order of disciplinary proceeding has been passed on 31.03.2011 in which order for compulsory retirement from bank service has been made.

10. Learned counsel for the bank submits that the petitioner on one hand not challenging the disciplinary proceeding but on the other challenging the punishment on the

ground that it is disproportionate and excessive. Learned counsel for the bank submits that it was well within the jurisdiction of the Disciplinary Authority to pass order of dismissal from the service but taking liberal view order of compulsory retirement has been passed. He submits that authorities have taken already a liberal view and therefore there is no need of any interference. He submits that all the retiral benefits has been paid to the petitioner completely in accordance with law and there is no need of any interference in the order. Counsel for the Bank has relied on the case of **Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Srivastava** reported in **(2021) 2 Supreme Court Cases 612.**

Upon perusal of the judgment it transpires that the relevant paragraphs are 22, 24, 25, 27, 41 and 42, which reads as follows:-

> ***"22.*** *The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors*

leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385] and later in State of T.N. v. A. Rajapandian [State of T.N. v. A. Rajapandian, (1995) 1 SCC 216 : 1995 SCC (L&S) 292] and further examined by the three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] wherein it has been held as under: (B.C. Chaturvedi case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , SCC pp. 759-60, para 13)

> *"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant.*

Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

24. *It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry 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 or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

***25.** When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:*

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

***27.** It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only* *requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.*

41. *In the case on hand, the disciplinary/appellate authority was not supposed to pass a judgment however while passing the order dated 24-7-1999, the disciplinary authority had taken note of the record of enquiry, including self-contained enquiry report dated 22-5-1999 and his prima facie opinion dated 29-6-1999 which was made available to the respondent employee and after affording reasonable opportunity of hearing and meeting out the written objections raised by the delinquent, expressed its brief reasons in upholding the finding of guilt and penalty of dismissal by its order dated 24-7-1999. That apart, the appeal preferred by the respondent delinquent was examined by* *the appellate authority as it reveals under paras 3(i) to (viii) in upholding the finding of guilt recorded by the enquiry officer in his report dismissing the respondent employee from service, rejected by order dated 15-11-1999. After detailed discussion, we are unable to accept the finding recorded by the High Court under its impugned judgment [SBI v. Ajai Kumar Srivastava, 2018 SCC OnLine All 5987] setting aside the orders passed by the disciplinary/appellate authority which deserves to be set aside.*

42. Before we conclude, we need to emphasize that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24-7-1999 confirmed in departmental appeal by order dated 15-

11-1999.”

11. I have perused the judgment passed by the Hon’ble Supreme Court in the case of **Union of India and Others Vs. P. Balasubrahmanayam** (supra), on which the petitioner has relied whose paragraphs 18-20 are relevant which is as follows:-

> *“18. We are, thus, of the view that the course adopted by the Tribunal was the appropriate course of action, i.e., the procedural lapses having been found and the bribery allegation having been rejected the appropriate course would have been to examine only the issue of disproportionality of punishment.*
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> *19. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportinality*

of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing site of the fact that the allegations qua bribery had not been found against the respondent.

20. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make

> *mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained."*

12. Upon perusal of the judgment it transpires to this Court that in the case on which the petitioner relied the allegation of bribery has been made and it has not been proved even then the punishment has been imposed. Here in the present case, the situation is completely different from that of above case, as such the finding made in the above mentioned case shall not be applicable in the present case.

13. After hearing the parties and upon going through the documents on record, particularly, the article of charge, statement of imputation and the defence filed by the petitioner, it is true that whatever the allegation alleged by the respondent-bank has been accepted by the petitioner and all charges found proved. In case of charges found proved, the option is at the hand of the Disciplinary Authority to impose major penalty including dismissal, removal, compulsory retirement etc., but instead of removal or dismissal the authorities have taken the view of compulsory retirement. It

has been acknowledged by the Appellate Authority in his order that the most of the irregularity advances by the CSO have been repaid. In this situation, the authorities have taken already a liberal view, this Court is not inclined to interfere in the order passed by the Disciplinary Authority and the Appellate Authority.

14. So far as the payment with regard to petitioner's gratuity and provident fund and other dues are concerned, in the opinion of the Court that when nothing has been inserted specifically in the punishment order, in that case he is entitled to get entire amount of the provident fund employer and the employee both contribution. As such this writ petition is dismissed with this observation that the entire provident fund amount, i.e., employer and employees both contribution, shall be paid to the petitioner within 90 days from the date of this order.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.05.2024
Transmission Date	NA