IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23403 of 2011

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Runa Chatterjee Wife of late Subir Chaterjee, R/o Village-Sharat Chandra Path, Masakchak, P.S.-Adampur, District-Bhagalpur.

... ... Petitioner/s

Versus

1. UCO Bank through the Chairman and Managing Director, 10 Bipalabi Trailokya Maharaj Sarani, Kolkata-700001.
2. The D.G.M. (Personnel Services Department), UCO Bank Head Office-2,3 and 4 DD Block, Sector-1, Salt Lake, Kolkata-700064.
3. The Chief Officer, UCO Bank, Zonal Office 24/16, Central Jail Road, Jawaripur, Bhagalpur, 812001.
4. Assistant General Manager, UCO Bank, Zonal Office 24/16, Central Jail Road, Jawaripur, Bhagalpur, 812001.
5. Branch Manager, Main Branch, UCO Bank, Bhagalpur, B.N. Singh Road, Kishorpuriya Marg, P.S.-Kotwali, District-Bhagalpur.
6. General Manager (HRN) Appellate Authority, UCO Bank, Human Resource Management Department, 3-4 DD Block, Sector-I, Salt Lake City, Kolkata-700064.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar,Advocate

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

Date : 15-02-2024

Heard Mr. Manish Kumar, learned counsel for the petitioner and Mr. Ranjeet Kumar Pandey, learned counsel for the UCO Bank.

2. During pendency of this writ application, the petitioner has filed I.A.No.9058 of 2011 challenging the order dated 11.11.2010 passed by the appellate authority by which the appeal preferred by the husband of the petitioner has been rejected.

3. For the reasons stated in the interlocutory application, I.A.No.9058 of 2011 is allowed.

4. The petitioner has filed the present writ application for quashing the order dated 17.12.2008 issued by the respondent No.4 by which he has communicated the final order awarding the punishment of “dismissal without notice” and quashing the order dated 11.11.2010 issued by the respondent No.6 by which the appeal preferred by the husband of the petitioner has been rejected.

5. The late husband of the petitioner was working with UCO Bank as Special Assistant and vide order dated 17.10.2005 by which the late husband of the petitioner was assigned some duties. The respondent No.1 had issued a guideline to all Branch Managers on 25.02.1987 with regard to the modified Laghu Bachat Yojna and as per the guideline issued by the respondent No.1, the Branch was not to offer a permanent seat to the agent in the Bank Premises and the agents could take one of the seats which was provided to the customers. In the year 2006, an audit was done in the Bank and as per the audit objection, it was found that the revised Laghu Bachat Yojna Scheme was not run as per the circular issued by the Head Office. The late husband of the petitioner was working as Special Assistant and he had the power to deal with the amount up to Rs.50,000/- only.

6. The First Information Report being Kotwali P.S.Case No.160 of 200 dated 16.03.2007 registered under Sections 409 and

420 of IPC against one agent, namely, Sri Jag Mohan Singh. The late husband of the petitioner was not named in the FIR but in spite of that he was suspended vide order dated 16.03.2007 issued by the Chief Officer (Disciplinary Authority). A show cause notice was issued to the late husband of the petitioner vide letter No.07-08 dated 25.08.2007, the late husband of the petitioner had filed a detailed reply on 08.09.2007. A chargesheet was served upon the late husband of the petitioner vide letter No.183 dated 07.01.2008. The late husband of the petitioner had filed a detailed reply to the chargesheet on 21.01.2008. Thereafter, the late husband of the petitioner was directed to submit the written statement of defence vide letter No. 206 dated 08.02.2008. Thereafter, a corrigendum chargesheet dated 07.01.2008 was also served upon the late husband of the petitioner vide letter No.48 dated 19.07.2008. Thereafter, an enquiry report of the Inquiry Officer was served upon the late husband of the petitioner vide letter No.68 dated 21.10.2008. The late husband of the petitioner submitted his comment over the enquiry report on 29.10.2008. The late husband of the petitioner was supplied the copy of the draft order of the disciplinary authority vide order No.77 dated 25.11.2008 for his personal hearing. He was again directed vide letter No.86 dated 16.12.2008 to appear for personal hearing on 17.12.2008, failing

which it was to be presumed that he had no explanation. The later husband of the petitioner submitted a detailed reply on 17.12.2008. The final order was passed on 17.12.2008 and same was served upon the late husband of the petitioner vide letter No.88 dated 17.12.2008 by which late husband of the petitioner was “dismissed without notice”.

7. The late husband of the petitioner preferred an appeal against the order dated 17.12.2008 before the Appellate Authority on 27.01.2009 and the same was not disposed of. In the meantime, the late husband of the petitioner died on 17.06.2009 and the order of the Appellate Authority dated 11.11.2010 was sent to the petitioner through registered post after the death of the husband of the petitioner.

8. The late husband of the petitioner has been held to be responsible for all the lapses even though he was staff of clerical cadre and used to receive duty after making the duty chart and from a bare perusal of the duty chart, it would appear that the duty with respect to cash receipt, Laghhu Bachat Yojna deposit etc. appears to have been added subsequently. Learned counsel for the petitioner submits that the entire account opening form was signed by the Manager also but he has been left off with a minor punishment of withholding of under agreements. Learned counsel

for the petitioner further submits that no documents supporting the charges were given to the late husband of the petitioner as a result of which late husband of the petitioner could not file an effective reply and the late husband of the petitioner has been awarded the punishment of "dismissal without notice".

9. Learned counsel for the petitioner has relied upon the judgment in the case of **Pramod Kumar Vs. The Champaran Kshetriya Gramin Bank & Ors**, reported in **2003(4)PLJR68**, paragraph Nos. 6,10 and 11 of the said judgment, which read as follows:

> "6. *Learned Counsel appearing for the Bank, on the other hand, submitted that proviso to Regulation 30(4) of the Service Regulation, does not require to give an opportunity of hearing and in absence of any such provision, no opportunity was given to the Appellant before exercising the power under the aforesaid provision".*
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> "10. *No doubt, the aforesaid proviso to Regulation 30(4) of the Service Regulation does not provide for giving an opportunity of hearing but the said proviso has to be read in such a*

manner as to cast a duty on the authority to act justly and fairly and not arbitrarily or capriciously. The order passed by the authority for treating the period of suspension as a period not spent on duty visits the employee with civil consequences. In such a situation, the principle of natural justice has to be read in the provision for the simple reason that the aim of the principle of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Even if the provision is silent, the nature of the power conferred on the authority, the manner in which the power is expected to be exercised and the consequences of the order are to be looked into to decide as to whether opportunity of hearing is to be given or not".

"11. *Taking into consideration the fact that the discretion has been vested in the authority and that the order passed by the authority may be prejudicial or detrimental to the employee, it is implied that an opportunity of hearing is to be given to the concerned employee before passing* *the order under proviso to Regulation 30(4) of the Service Regulation".*

10. Learned counsel for the petitioner also relied upon the judgments in the case of **Union of India & Ors Vs. S.K. Kapoor**, reported in **2011 AIR SCW 1814** and in the case of **Madan Mohan Roy Vs. The State of Bihar & Ors,** reported in **(2013)4 PLJR 398**.

11. Learned counsel for the Bank has filed the counter affidavit as well as supplementary counter affidavit stating therein that the late husband of the petitioner was proceeded departmentally and after completion of departmental proceeding, he was awarded punishment of dismissal from service. Thereafter, he preferred appeal before the Appellate Authority and during pendency of appeal the husband of the petitioner died and the present writ application has been filed by the wife of Late Subir Chatterjee. Further submits that the related papers/documents upon which the Bank was relied to prove the charges against the late husband of the petitioner was produced by the Presenting Officer in the enquiry proceeding and exhibits were marked, copies of the management exhibits were also given to the C.S.E. which is also evident from the fact that after 19.06.2008, the enquiry proceeding held on four different dates and on each date of proceeding D.R.

and C.S.E. have put their signature on each page of proceeding but they have not stated that copy of the management exhibits have not been given to the C.S.E. rather in the brief of arguments dated 17.10.2008 submitted on behalf of the C.S.E. which also suggests that all the management exhibits were given the late husband of the petitioner during course of the enquiry proceeding and as per direction of the disciplinary authority, the late husband of the petitioner has also submitted her comments on the report of the enquiry officer. From a bare perusal of the Comment of the late husband of the petitioner, it appears that he has also referred different management exhibits but nowhere he has stated that he was not given copy of the management exhibits

12. Learned counsel for the Bank further submits that the late husband of the petitioner has preferred an appeal before the Appellate Authority against the final order of disciplinary authority wherein he has referred several management exhibits and copies of the several management exhibits were also enclosed alongwith memo of appeal which goes to show that the copy of the management exhibits were given to the late husband of the petitioner during course of enquiry proceeding and apart from that the late husband of the petitioner never raised nay objection with regard to the non-availability of the relevant documents and it

appears from the aforesaid that the entire departmental proceeding was concluded against the late husband of the petitioner in accordance with law and the late husband of the petitioner was given ample opportunity to defend his case, the principle of natural justice have been complied with and there is no procedural irregularity in the departmental proceeding and he has relied upon the judgment in the case of **Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava**, reported in **(2021)2 SCC 612**, paragraph Nos. 22,24,25,27,28,41, and 42 of the said judgment, which read 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 Tamil Nadu Vs. T.V. Venugopalan and later in Government of T.N.*

and Another Vs. A. Rajapandian and further examined by the three Judge Bench of this Court in B.C. Chaturvedi Vs. Union of India and Others wherein it has been held as under:

> "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 [(1964) 4 SCR 718] this Court held at p. 728 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 if 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 is perverse or suffers 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".*

"28.*The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained".*

"41. *In the case on hand, the disciplinary/appellate authority was not supposed to pass a judgment however while passing the order dated 24th July, 1999, the* *disciplinary authority had taken note of the record of enquiry, including self contained enquiry report dated 22nd May, 1999 and his prima facie opinion dated 29th June, 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 24th July, 1999. That apart, the appeal preferred by the respondent delinquent was examined by the appellate authority as it reveals under para 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 15th November, 1999. After detailed discussion, we are unable to accept the finding recorded by the High Court under its impugned judgment 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 24th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999".*

13. Learned counsel for the Bank submits that the judgment referred by the learned counsel for the petitioner in the case of **Pramod Kumar Vs. The Champaran Kshetriya Gramin Bank & Ors, reported in 2003(4)PLJR 68** (Supra), the present

case is not covered under the proviso of Regulation 30(4) of the Service Regulation.

14. In view of the settled legal position as reported in **2021(2) SCC 612 (Supra)**, this Court held that the entire departmental proceeding was conducted against the husband of the petitioner in accordance with law and ample opportunity was given to defend his case and principle of natural justice also complied with and there is procedural irregularity in the departmental proceedings.

15. There is no merit in this writ application. It is, accordingly, dismissed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2024
Transmission Date	NA