

Form No. J(2)
Item No.32.
Court No.26

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi**

**M.A.T. 949 of 2024
IA NO: CAN/1/2024**

**Chandra Sekhar Pal.
vs.
UCO Bank & Ors.**

For the Appellant : Mr. Sujit Lal Sircar, Advocate

For the
Respondent/UCO Bank: Mr. Victor Chatterjee,
Advocate
Mr. Sourjya Roy, Advocate

Hearing on : 29.07.2024

Judgment on : 29.07.2024

DEBANGSU BASAK, J.:-

1. The appeal is at the behest the writ petitioner and directed against the order dated March 13, 2024 passed in W.P.A. 4681 of 2023.
2. By the impugned order, learned Single Judge dismissed the writ petition of the appellant.

3. Learned advocate appearing for the appellant submits that, the appellant superannuated from service on June 30, 2018. A memorandum was issued to the appellant on December 6, 2019 alleging dereliction of duty causing financial loss to the bank during the period of employment of the appellant.
4. Learned advocate appearing for the appellant submits that, an enquiry proceeding was held. He refers to the minutes of the enquiry proceedings dated March 19, 2020, where documents on behalf of the management were produced. He submits that, no prosecution witness was examined in chief. Appellant was not permitted to produce defence documents or defence witness. Appellant was not permitted to cross-examine the prosecution witnesses.
5. Learned advocate appearing for the appellant refers to the letter dated September 2, 2020 issued by the management, where the appellant was asked to submit written submissions, which the appellant complied with. He submits that, no further enquiry proceeding was held. An enquiry report was prepared. Thereafter, on the basis of such enquiry report dated September 23, 2020, appellant was asked to submit a response thereto.
6. Learned advocate appearing for the appellant submits that, appellant was served with an order passed by the disciplinary authority dated February 11, 2021. He refers to the order of punishment imposed,

which is recovery @ 20% of the pension amount receivable by the appellant.

7. Learned advocate appearing for the appellant refers to the UCO Bank (Employees') Pension Regulation, 1995 and in particular to regulation 43 and 48 thereof. He submits that, the appellant is entitled to prefer an appeal since an order of punishment was imposed under regulation 43. He submits that, appellant filed an appeal on March 3, 2022. Such appeal was sought to be disposed of by a writing dated April 8, 2021 on the ground that there was no provision under the Regulations of 1995 for preferring an appeal against the order of the competent authority.
8. Learned advocate appearing for the appellant draws the attention of the Court to the order of punishment dated February 11, 2021. He submits that, extraneous matters were taken consideration for the purpose of arriving at the decision to impose punishment Moreover, quantification of the loss allegedly caused by the appellant to the bank was not made for the disciplinary authority to impose the punishment of deduction of 20% of the pension amount. Without quantification of the loss, the order of punishment is open ended, uncertain and incapable of being made certain
9. Learned advocate appearing for the appellant relies upon **1995 Supp (3) Supreme Court Cases 212 [S.C. Girotra versus United Commercial Bank (UCO Bank) & Ors.]** in support of the contention

that, the management is guilty of breach of principles of natural justice and therefore, the disciplinary proceeding should be set aside.

10. Learned advocate appearing for the bank submits that, bank followed the provisions of Regulation of 1995 with regard to the disciplinary proceeding against the appellant. He submits that, despite two opportunities being granted during the enquiry, the appellant did not produce any defence document or defence witness. A last opportunity to do so was provided by the letter dated September 2, 2020. Appellant did not produce any defence document or defence witness at the enquiry despite such opportunities being granted.

11. Learned advocate appearing for the bank submits that, the enquiry officer proceeded on the basis of the materials on record and submitted his enquiry report. Such enquiry report was considered by the disciplinary authority and a decision to impose punishment was taken and communicated by the letter dated February 11, 2021. Punishment imposed is in accordance with regulation 48 of Regulations of 1995. Since the punishment imposed was in accordance with the regulation 48 of Regulations of 1995, question of any appeal under regulation 43(2) of the Regulations of 1995 being entertained, does not arise.

12. Learned advocate appearing for the bank submits that, there was no breach of principles of natural justice in the enquiry proceedings.

Appellant was heard, appellant submitted replies, both to the show-cause notice as also prior to the disciplinary order being passed.

13. Appellant before us superannuated from service on June 30, 2018.

Appellant was functioning as a Branch Manager of the bank. Parties before us are governed by the provisions of the UCO Bank (Employees') Pension Regulation, 1995.

14. On the allegation of dereliction of duty and acting in excess of his powers, thereby causing financial loss to the bank, a disciplinary proceeding was instituted against the appellant by a memo dated December 6, 2019. Appellant responded thereto in writing. Enquiry proceedings were held. Appellant participated in such enquiry proceedings. Appellant was afforded opportunities, at least twice to produce defence documents. Appellant did not produce any defence document.

15. On March 19, 2020 one of the meetings of the enquiry proceedings was held. In such meeting, defence representative was not present. Management produced documents in the enquiry proceedings, which the appellant as Charged Superannuated Officer (CSO) did not object to such documents being considered in the enquiry proceedings. Such documents were marked as exhibits.

16. Thereafter, finding that the enquiry proceedings was continuing over a period of time, letter dated September 2, 2020 was issued to the appellant calling upon the appellant to submit written arguments,

which the appellant did. Appellant submitted his written notes of arguments in the enquiry proceedings. Enquiry proceedings culminated into the enquiry report dated September 23, 2020. An order dated February 11, 2021 was passed by the disciplinary authority.

17. In the order dated February 11, 2021, the disciplinary authority found the charges against the appellant proved and proceeded to impose penalty of recovery from pension being paid to the appellant @ 20% of the pension amount.

18. Appellant preferred an appeal from the order dated February 11, 2021 by a writing dated March 31, 2021. Such appeal was sought to be disposed of by a writing dated April 8, 2021 on the ground that, there is no provision under the Regulations of 1995 for preferring an appeal.

19. Relevant provisions of the Regulations of 1995 are as follows:

“43. Withholding or withdrawal of pension.-(1) *The Competent Authority may, by order in writing, withhold or withdraw a pension or at thereof, whether permanently or for a specified period, if the pensioner is convicted of at thereof, whether permanently or for a specified period, if the pensioner is convicted of serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct :*

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

(2) An appeal against an order under sub-regulation(1) shall be to an authority higher than the authority passing the order appealed against and such higher authority shall pass such order on the appeal as he deems fit.

48. Recovery of Pecuniary loss caused to the Bank-

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these Regulations.

Provided also that the departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these Regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institutions:

Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee."

20. Regulation 43 allows the bank to withhold or withdraw a pension, whether permanently or for a specified period, if the pensioner is convicted of serious crime or criminal breach of trust or forgery nor acting fraudulently or is found guilty of grave misconduct.

21. Proviso to sub-regulation (1) of regulation 43 provides that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per month payable under the Regulations of 1995.
22. Sub-regulation (2) regulation 43 provides for an appeal against an order passed under sub-regulation (1). It requires such appeal to be heard by an authority higher than the authority passing the order appealed against. It allows the appellate authority to pass such order on appeal as the appellate authority may deem fit.
23. Regulation 48 permits recovery of pecuniary loss caused to the bank by withholding or withdrawal of a pension. It provides in sub-regulation (3) thereof that the recovery shall not ordinarily be at the rate exceeding 1/3rd of the pension admissible on the date of the superannuation of the employee concerned.
24. Regulations of 1995, in our view, require the quantification of the loss suffered for such loss to be recovered by withholding or withdrawal of pension maximum to the limit of 1/3rd of pension receivable by the employee concerned on the date of his superannuation.
25. Sub-Regulation (2) of Regulation 43, which allows the appeal, is not dependent upon failure of the bank to act in terms of regulation 48 or not as sought to be contended on behalf of the bank. Regulation 43,

Sub-Regulation (2) permits a person aggrieved by a decision taken under regulation 43 (1) to prefer an appeal therefrom.

26. In the facts of the present case, it cannot be said that the appellant before us is not aggrieved by an order passed by the disciplinary authority under regulation 43 (1) of the Regulations of 1995. The appellate authority, therefore, was not right in rejecting the appeal of the appellant on the ground that there was no provision for appeal.
27. We are minded to set aside the writing dated April 8, 2021 issued by the bank in respect of the appeal filed by the appellant. We are of the view that the appellate authority should hear and decide the appeal filed by the appellant by the letter dated March 31, 2021 directed against the order of punishment dated February 11, 2021, in accordance with law.
28. In such circumstances, we set aside the letter dated April 8, 2021 of the bank and direct the appellate authority to hear and decide the appeal of the appellant dated March 31, 2021 directed against the order dated February 11, 2021 as expeditiously as possible. The appellate authority will afford a reasonable opportunity of hearing to the appellant. Appellate authority will pass a reasoned order, which it will communicate to the appellant forthwith thereafter. It is expected that the entire appeal is heard and disposed of within six weeks from date.

29. The ratio laid down in **S.C. Girotra (*supra*)** is not discussed as we are not deciding the issue as to the breach of principles of natural justice or not, in view of the directions issued for the hearing of the appeal.

30. We, therefore, keep all points raised by the parties open to be decided by the appellate authority. The appellate authority will not be influenced by any of the observations made by us in this appeal, while deciding the appeal of the appellant dated March 31, 2021.

31. Impugned order dated March 13, 2024 is set aside.

32. M.A.T. 949 of 2024 along with the connected application are disposed of without any order as to costs.

(Debangsu Basak, J.)

33. I agree.

(Md. Shabbar Rashidi, J.)