

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 950 of 2023

Saibal Roy

VS

Uttar Banga Kshetriya Gramin Bank & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Indranath Mitra,

Mr. Nabankur Paul,

Mr. Abhisekh Sarkar,

----- for the petitioner.

Mr. Jayanta Kumar Singh,

Mr. Prajwal Gurung,

----- for the respondent.

Hearing concluded on : 3.01.2024

Judgment On : 25.01.2024

M.V. Muralidaran, J.:

Challenging the impugned order of punishment of removal from service dated 11.10.2014, the petitioner has filed the present writ petition.

2. The case of the petitioner is that he was appointed as Cashier cum Clerk in Uttar Banga Kshetriya Gramin Bank (UBKGB) on 26.2.1992. On and from 26.12.2007, the petitioner fell sick and intimated the competent authority. After obtaining fitness certificate dated 9.1.2010, the petitioner requested the Chairman of UBKGB to allow him to join service. Despite receiving the request letter dated 10.1.2010, nothing has been done. On the contrary, on 25.4.2013, a charge sheet was issued by the Chairman in contravention of the provision of Regulation 2(g), 5(1) and 23. A departmental enquiry was commenced and concluded after exchanging the written arguments by the Presenting Officer and the petitioner and findings of the Enquiry Officer was served on the petitioner. The petitioner replied on the findings of the Enquiry Officer and thereafter, proposed punishment order was served upon the petitioner. On receipt of the proposed punishment order, the petitioner submitted his written submission before the Chairman for consideration. Since the petitioner was not allowed to join, the petitioner had filed WPA No.27671 of 2022 before this Court which was subsequently transferred to the Circuit Bench at Jalpaiguri and renumbered as

WPA No.37 of 2023. On 6.1.2023, the said writ petition was dismissed with an observation that if the petitioner desires to challenge the administrative order dated 11.10.2014, he can do so in accordance with law. Accordingly, the petitioner has filed the present writ petition.

3. The respondents filed affidavit-in-opposition stating that while working as Office Assistant, Darjeeling Judge Bazar Branch of the UBKGB, the petitioner was served with a show cause notice for his absence from the branch since 26.12.2007 to 10.12.2012 without having proper permission. The petitioner was considered to have the habit of remaining absent for long period without obtaining any prior permission from his higher authority. On 17.12.2012, the petitioner replied to the show cause notice where he failed to justify his leave of absence. Thereafter, on 15.3.2013, a second show cause notice was served upon the petitioner calling for an explanation as to why disciplinary action should not be initiated against him. The petitioner has submitted his explanation dated 28.3.2013 without any justification against his leave of absence. Finding the reply of the petitioner unsatisfactory, proposed to initiate disciplinary

proceeding against the petitioner and the petitioner was served with a charge sheet dated 25.4.2013 as per Regulation Nos.18, 23 and 24 of Uttar Banga Kshetriya Gramin Bank (Officers and Employees) Service Regulations, 2010 attracting penalties under Regulation 39. In exercise of power conferred under Regulation 41, the respondent bank appointed Sri Anoj Kumar Roy, Branch Manager of Salugara Branch as an Enquiry Officer and after concluding the disciplinary proceeding, the Enquiry Officer submitted his findings dated 23.6.2014. Upon considering the findings of the Enquiry Officer and the argument of the Presenting Officer as well as the petitioner, the disciplinary authority concluded that charge nos.(i) and (ii) were proved against the petitioner. Before infliction of any punishment, for the sake of natural justice, the petitioner was given a fair chance for hearing wherein the proposed punishment was conveyed through an order dated 13.8.2014, against which, the petitioner has filed review petition. However, he has not shown any interest to know the outcome of the review petition. After considering the review petition, final order dated 11.10.2014 was passed against the petitioner wherein he was found guilty of the charges and removed him from service and the said order was

duly communicated to the petitioner. However, the same was returned to the bank with a postal remark "unclaimed", which as per General Clauses Act considered to be good service in the eyes of law. The copies of final order and the administrative order were also displayed on the Branch notice board for information of the concerned person.

4. Assailing the impugned order of punishment, the learned counsel for the petitioner, *inter alia*, submitted that the charge sheet was issued in contravention with Regulation 2(g). Regulation 2(g) confers power only upon the competent authority to take disciplinary action and to initiate disciplinary proceedings and the initiation of proceedings by the Chairman, UBKGB by way of charge sheet dated 25.4.2013 is bad in law. The charge is to be framed against the delinquent employee by the disciplinary authority applying his own mind and the impugned charge sheet is nullity in the eye of law. Regulation 39 gives power upon the competent authority to pass major penalty. He would submit that the appointment of Enquiry Officer by the Chairman is bad in law in view of Regulation 41. Since the very appointment of the Enquiry Officer is bad in law, the entire proceedings vitiate. In

fact, the Enquiry Officer has failed to discharge his duties in a faithful manner.

5. The learned counsel for the petitioner further submitted that the order of punishment of removal from service passed by the Chairman as disciplinary authority is not legally sustainable as in terms of Regulation 2(g), the General Manager of UKGB is the authority who can initiate the proceedings and pass punishment. Since the order of punishment of removal from service was passed by the Chairman, right to appeal which is the statutory right has been taken away as the Chairman is the appellate authority. The Chairman has been acting in an unreasonable, unfair and arbitrary manner which clearly violates the petitioner's right protected under Article 14 and 16 of the Constitution of India.

6. Placing reliance upon the decisions of the Hon'ble Supreme Court in the cases of *(i) A.K.Roy and another v. State of Punjab and others, (1986) 4 SCC 326; (ii) Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others, (2011) 5*

SCC 435, the learned counsel for the petitioner argued that where the statute confers a power to be exercised or performed in a specific manner, other modes of exercise or performance impliedly barred. If any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal.

7. The learned counsel for the respondents, on the other hand, submitted that the petitioner has absented himself for minimum 846 days in one stretch from 26.12.2007 to 21.4.2010 and to justify his absence apart from certificate from Homeopathic General Physician of Kolkata, the petitioner also submitted prescriptions of outpatient department of Allopathic North Bengal Medical Hospital, Darjeeling District. Despite having not cured for longer period, the petitioner repeatedly visited the same hospital for Allopathic treatment and had not taken any other special treatment as the disease mentioned by Homeopathic Physician was chronic spondylitis is very common Orthopedic disease.

8. Taking through several provisions of the UBKGB Service Regulations, the learned counsel for the respondents submitted that the petitioner even did not bother to intimate his officer in charge about his station leave which is certainly violation of the Regulations. The Kolkata based Homeopathic General Physician certificate dated 12.2.2008 attached to the writ petition clearly prove that between 28.12.2007 and 12.2.2008, the petitioner was out of station while the prescriptions from time to time attached to the writ petition is of Allopathic Hospital, Darjeeling.

9. The learned counsel for the respondents further submitted that a careful scrutiny of the prescriptions produced by the petitioner would reveal that it is a matter of astonish how a Government Hospital (North Bengal Medical College) have a single outdoor patient as the petitioner during the period 26.12.2007 to 23.9.2009. If the petitioner was not a single outside patient from the aforesaid period, then only possibility left that all the prescriptions have been manufactured on any single day for entire period and submitted before this Court to mislead the Court and get undue benefits. Where there is specific guidelines of availing sick leave and resumption of duty

on the expiry of sick or medical leave as mentioned in Regulation 62(d)(iv), why the petitioner sought permission to join the service. The petitioner has failed to produce evidence in support of his plea.

10. The learned counsel for the respondents next submitted that since the petitioner failed to join the service till 10.12.2012, the bank had issued a memo seeking explanation as to why disciplinary action shall not be initiated against him for remaining unauthorized absent from duty since 26.12.2007. The petitioner, in his reply, submitted his manufactured documents in order to obtain sympathy. The competent authority had rightly initiated the disciplinary proceedings as per the service regulations.

11. The learned counsel for the respondents then submitted that the disciplinary proceedings was initiated by the Chairman who stands above the rank of General Manager or Scale IV on exigency and where the disciplinary authority is Chairman the appellate authority would be Board of Directors. Therefore, although Chairman acted as disciplinary authority but the petitioner was never deprived from his right to justice any time.

That apart, during the entire disciplinary proceedings, he never raised this point and had participated the proceeding. Now at this stage, the petitioner is trying to take the shelter of this point to make the entire proceeding violation of the regulations.

12. The learned counsel for the respondents argued that before infliction of punishment, for the sake of natural justice, the petitioner was given fair chance of hearing by the disciplinary authority and the proposed punishment was conveyed through the order dated 13.8.2014. The writ petitioner filed review petition against the said order, however, he has not pursued the same. The final order dated 11.10.2014 was passed against the petitioner wherein he was found guilty of the charges proved against him and removed him from service. The punishment of removal from service was recorded as not a disqualification for future employment as per Clause 39.2(b)(iv) of the Regulation. Thus, a prayer has been made to dismiss the writ petition.

13. This Court considered the rival submissions canvassed on either side and also perused the materials available on record.

14. The charges framed against the petitioner dated 25.4.2013 read thus:

Charge No.1:

Sri Saibal Roy, Office Assistant, Darjeeling Judge Bazar Branch remained on unauthorized absence from his duty for more than 1870 days disobeying the service conduct.

Charge No.2:

Sri Saibal Roy, Office Assistant, Darjeeling Judge Bazar Branch has availed loans in his name and in the name of his wife from bank and not paid the installments due for which the account turned NPA.

16. The charges on which, the removal had happened are principally two-fold. Firstly, alleged unauthorized absence; and, secondly, alleged non-payment of loan received by the petitioner from the first respondent.

17. Under the order dated 19.11.2013, an Enquiry Officer was appointed and the Enquiry Officer had fixed the enquiry on 12.12.2013, for which a communication was addressed to the petitioner on 29.11.2013 calling upon him to attend the enquiry in person. The petitioner had participated in the enquiry. The

Enquiry Officer gave his findings stating that Charge No.1 is proved beyond doubt as the petitioner was on unauthorized absence from his duty for more than 1870 days thereby violating the rule and norms and service regulation of the bank. With regard to Charge No.2, the finding of the Enquiry Officer is to the effect that Charge No.2 is proved beyond doubt and as per the norms of the bank all loans indicated in the report have become NPA.

18. On 23.7.2014, the petitioner had submitted his reply on the findings of the Enquiry Officer. In the reply, the petitioner had stated that the opinion of the Enquiry Officer is utterly preposterous. The petitioner was denied reasonable opportunity and thereby, there was gross violation of the principles of natural justice. As far as Charge No.2 is concerned, the petitioner agrees with the Presenting Officer that he could not repay and keep the relevant loan accounts updated due to his long absence which he would again try to impress upon the Enquiry Officer was not entirely due to his illness, but on account of not permitting him to join duty. Having unsatisfied with the reply and concurring with the findings of the Enquiry Officer, the Chairman

proposed to award the following punishment in respect of both charges:

"Removal from service which shall not be a disqualification for future employment" as per Clause 39.2(b)(v) of Uttarbanga Kshetriya Gramin Bank (Officers and Employees) Service Regulation 2010."

19. The disciplinary authority/Chairman, for the sake of natural justice and in order to give opportunity to the charge sheeted employee, fixed the date of hearing on 21.8.2014 at 12.30 pm for imposition of punishment. On 21.8.2014, the petitioner appeared before the disciplinary authority and submitted his explanation by stating that his actual leave of absence from duty was from 26.12.2007 to 9.1.2010 which is much below than the alleged absence of 1870 days and that the absence from 10.1.2010 onwards was beyond his control and was due to pendency of decision of the branch not allowing the petitioner to join duties. With respect to Charge No.2, the petitioner stated that he had no other source of income to repay the loans in the absence of earnings from salary and he is still eager to regularize the loans in question as early as possible and

thus prayed to review the entire matter and sympathetically consider his prayer for resuming duties. Thereafter, vide impugned order dated 11.10.2014, the General Manager inflicted the punishment of removal from service which shall not be a disqualification for future employment upon the petitioner.

20. The learned counsel for the petitioner argued that the appointment of Enquiry Officer and Presenting Officer by the Chairman is bad in law as Regulation 41 does not confer power upon the Chairman. As such, any action taken by the Enquiry Officer and the Presenting Officer is nullity in the eye of law.

21. On a perusal of the material papers, it is seen that during the entire disciplinary proceedings, the petitioner never raised the point as to the powers conferred upon the General Manager to initiate proceedings and the Chairman, UBKGB cannot act as disciplinary authority. Only for the first time in the writ petition, the petitioner has raised such plea, which would clearly prove that the petitioner is trying to take the shelter of the aforesaid point to make the entire proceeding vitiated by relevant regulations. In the facts and circumstances of the case

and having participated in the disciplinary proceedings, the petitioner is estopped from raising the aforesaid plea now.

22. Coming to the merits of the charges framed against the petitioner, the petitioner is said to have fallen sick on and from 26.12.2007 till 9.1.2010 and due to this, he did not try to join the bank till 21.4.2010, the date when he first time approached the bank with a request to join after 846 days of his absence in one stretch. The petitioner admittedly absented himself for minimum 846 days in one stretch from 26.12.2007 to 21.4.2010. In order to justify his absence, the petitioner has produced prescriptions of Homeopathic General Physician as well as prescriptions of Allopathic North Bengal Medical Hospital, Darjeeling District as outpatient. Both the prescriptions submitted by the petitioner admittedly are contradictory.

23. Regulation 24 of Uttar Banga Kshetriya Gramin Bank (Officers and Employees) Service Regulations, 2010 provides:

"No officer or employee shall remain absent himself from his headquarters overnight without obtaining previous sanction from –

- 1) *In case of the Branch Manager/Officer In Charge of the Branch then the Regional Manager/General Manager.*
- 2) *In other cases, Branch Manager/Officer in charge of the bank."*

24. It is not the case of the petitioner that he duly intimated his superior about his station leave. It is clear from the case put forth by the parties that the petitioner even did not bother to intimate his officer in charge about his station leave, which is in violation of the Regulation.

25. Regulation 63 deals with extraordinary leave. Regulation 63(2) would be relevant and the same is quoted hereunder:

"63. Extraordinary Leave, - (1)

(2) The duration of extra ordinary leave to be granted to an officer or employee shall not exceed 90 days on any occasion and 360 days during the entire period of his service;

Provided that in the exceptional circumstances, the Chairman may, with the approval of Board, grant extraordinary leave upto a total period of 720 days to an officer or employee:

Provided further that in case of chronic sickness of an officer or employee, the Chairman may, with the approval of the Board grant extraordinary leave in excess of 720 days to him and the Board, while according such approval, shall record the specific reasons therefor in writing.

26. At this juncture, the learned counsel for the respondents submitted that the petitioner absented himself for 1870 days between 26.2.2007 to 10.12.2012. If we take the submission of the petitioner where he has absented himself for not less than 846 days from 27.12.2007 till 21.4.2010, the date when the petitioner first time approached the bank with an application dated 10.1.2010 for request of joining the bank. The absence of 846 days in one stretch is not only higher than 360 days, but also it is more than 720 days. This Court finds some force in the said submission made by learned counsel for the respondents.

27. The Presenting Officer in his arguments submitted before the disciplinary authority that the petitioner remained on unauthorized absence from his duty for a period of more than

1870 days and the defense representative of the petitioner could not refute and rebut the charges and deduce no analogy to dispute the said charges.

28. The Enquiry Officer, after considering the oral and documentary evidence produced by the parties, has rightly given findings that the charges framed against the petitioner are proved. Having satisfied with the findings of the Enquiry Officer and upon unsatisfied with the explanation offered by the petitioner, the disciplinary authority has rightly proposed the punishment and was conveyed to the petitioner. Though the petitioner filed a review petition against the order dated 13.8.2014, the petitioner has not shown interest in prosecuting the said review petition. Only after considering the review petition coupled with the other material papers, the impugned final order dated 11.10.2014 came to be passed against the petitioner wherein he was found guilty of the charges and since the charges are proved, the petitioner was removed from service.

29. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in

exercise of its powers under Article 226 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence.

h. the finding of fact is based on no evidence.

30. Under Article 226 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence.
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law.
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

31. On an overall analysis of the matter, this Court is of the view that there is no violation in initiating the departmental

proceeding against the petitioner for his unauthorized absence of more than 1870 days. The disciplinary authority has also after considering the seriousness of the issue and the explanation offered by the petitioner, rightly inflicted the punishment. It was not open to the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, to go into the proportionality of the punishment so long as the punishment does not shock the conscience of the Court.

32. It is settled law that for long unauthorized absence from duty, the punishment of dismissal of the personnel cannot be held to be *per se* disproportionate.

33. The disciplinary proceedings was held after affording fair opportunity to the petitioner. Though the Chairman acted as disciplinary authority, the petitioner was never deprived from his legible rights and the principles of natural justice was followed during the entire proceedings.

34. The disciplinary authority, on scanning the enquiry report and having accepted it, after discussing the available

evidence on the charges, imposed the punishment. Therefore, it is not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226 of the Constitution of India.

35. There are no valid grounds raised by the petitioner to interfere with the order of punishment. Only after applying the mind and upon considering the relevant regulations, the punishment was inflicted on the proved charges. Admittedly, there is no merit in the present writ petition.

36. In the result, WPA 950 of 2023 is dismissed. There shall be no order as to costs.

(M.V. Muralidaran, J.)