



2024:DHC:4443



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 22.05.2024

+ W.P.(C) 5787/2013

VISHAMBHAR NATH

..... Petitioner

versus

UNITED COMMERCIAL BANK & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Praveen Kumar, Advocate

For the Respondents : Mr. Sarfaraz Khan, Advocate for respondents
Mr. Apoorv Kurup and Ms. Gauri Gabardhan, Advocates for UGC**CORAM:****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-

“a] issue an appropriate writ and set aside the impugned order dated 11.05.2012 passed by the Deputy General Manager, PSD, Head Office, Kolkata declaring it as contrary to the prescribed rules.

b] Direct the Respondents to release full pay with all allowances as per the entitlement of the Petitioner in accordance with rules and regulations treating the period



between 26.11.1994 to 06.03.2003 as on duty;

c/ Direct the Respondents to grant promotion to the Petitioner as per his entitlement.”

2. Mr. Kumar, learned counsel appearing for the petitioner submits that in the present case, the petitioner was suspended *vide* the suspension order dated 26.11.1994 which was revoked on 05.02.2003.

3. Mr. Kumar, learned counsel submits that on 05.02.2003, the Competent Authority had revoked the suspension with immediate effect and had also stipulated therein that the period of suspension of the petitioner from 1994 through till the date of revocation of the suspension, would be decided on the final outcome of the criminal proceedings pending as on that date against the petitioner.

4. Mr. Kumar submits that the punishment which was awarded to the petitioner in the disciplinary proceedings, which was initiated and culminated before the year 1994, has already been undergone by him. To that extent, Mr. Kumar submits that the petitioner is not airing any grievance.

5. The grievance of the petitioner is that the impugned order dated 11.05.2012 of the Competent Authority treated the suspension period from the year 1994 through till 2003 as “*not spent on duty*” on the basis that the order of acquittal passed by the learned Trial Court in the criminal proceedings was not a clean acquittal and as such, no pecuniary benefits could be claimed by the petitioner thereon.



6. Mr. Kumar, learned counsel draws attention of this Court to the judgment dated 25.11.2011 passed by the Special Judge, Tis Hazari Courts, Delhi in respect of the Corruption Case No. 22/2010 titled ***CBI vs. V.L. Nagar and Another*** wherein the petitioner was accused no.2. He invites attention specifically to para no.12 wherein the statements of the witnesses alleged to have been made against the petitioner, have been recorded. As also to paras 13 and 14, wherein the learned Trial Court noted that there was no evidence, of whatsoever nature, at all against the petitioner for his implication in the allegations levelled by the CBI. Ultimately, in paras 17 and 18 of the said judgment, the learned Trial Court had honourably and cleanly acquitted the petitioner.

7. Mr. Kumar, learned counsel submits that the non-consideration of the aforesaid judgment of the learned Trial Court in its true import and purport has caused prejudice to the petitioner. In that, the period from 1994 till 2003, i.e., the period of suspension has not been treated as “*spent on duty*” depriving him of the financial benefits.

8. He relies upon the judgment of the Supreme Court in ***Deputy Inspector General of Police and Another vs. S. Samuthiram*** reported in (2013) 1 SCC 598, particularly to para 24 to submit that the Supreme Court had considered the import of the words “*honourable acquittal*”, “*acquitted of blame*”, “*fully exonerated*” and had laid down certain parameters for such consideration. He submits that his case is squarely covered by the



ratio laid down by the Supreme Court in the aforesaid judgment and as such, the petitioner is entitled to all such financial benefits during the period of suspension, which have been denied to him on the basis that the said period has been considered as “*not spent on duty*”.

9. Mr. Sarfaraz Khan, learned counsel appearing for the respondents placed on record UCO Bank Officer Employees’ (Discipline and Appeal) Regulations, 1976. Mr. Khan submits that the penalty imposed upon the petitioner as modified by the Appellate Authority *vide* its order dated 16.11.1993 is enumerated at page 47 to 51 of the present writ petition. He submits that out of the many penalties on various charges, the penalties imposed for Charge nos.4 and 5 are major penalties.

10. In order to support the said contentions, learned counsel for the respondents draws attention of this Court to the Regulation 4 of the Regulations of the respondent bank, particularly to sub-Clause (e) and (f). From the said sub Clause (e), he submits that the penalty of reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect would fall within the purview of a minor penalty so far as Articles of Charge nos.4 and 5 are concerned.

11. He supported the aforesaid submission by referring to the sub Clause (f) which provides the penalty of reduction to a lower stage in the time scale of pay for a specified period and submits that it would fall within the major penalties as distinct from the three year period stipulated in sub Clause (e). He submits that the



said Regulations have been considered by the Competent Authority while deciding the representation of the petitioner so far as his claim for the suspended period to be treated as “*spent on duty*” is concerned.

12. Learned counsel also invites attention of this Court to Regulation 12 which stipulates the procedure and manner of suspension of a charged employee. He submits that as stipulated in Clause (b) of sub regulation (1) of Regulation 12, the charged official can be kept in suspension also in respect of any criminal offence under investigation, inquiry or trial which is pending against such charged officer. He submits that it is not disputed that when the petitioner was placed under suspension on 26.11.1994, the Competent Authority at that time had taken into consideration the said facts. The CBI had filed the charge sheet on 31.08.1994 wherein the petitioner too was named. He submits that the said suspension is in accordance with the Rules and Regulations and cannot be questioned by the petitioner.

13. So far as the claim of the petitioner regarding the entitlement for the period of suspension by treating it as “*spent on duty*” is concerned, he invites attention of this Court to Regulation 15 which deals with pay, allowances and treatment of service on termination of suspension.

14. Learned counsel submits that the respondent/bank predicated the impugned order on the basis of sub regulation 3(b) of Regulation 15. According to learned counsel, in those cases which fall under sub regulation (2) of Regulation 15, the period of



absence from duty shall not be treated as period “*spent on duty*” unless the Competent Authority specifically directs in writing that it shall be so treated for any specific purpose. Further to the aforesaid submission, learned counsel submits that it cannot be disputed by the petitioner that during the period of suspension, the petitioner was facing criminal proceedings in a Court of competent jurisdiction and as such, his case squarely fell under the Clause (b) of sub regulation (3) of Regulation 15.

15. Learned counsel submits that though during such period, the petitioner was receiving his subsistence allowance in accordance with the Regulations which is not disputed.

16. Learned counsel submits that keeping the aforesaid Regulations in mind, the impugned order dated 11.05.2012 was passed by the Competent Authority.

17. Learned counsel submits that the Competent Authority at that point of time did not have the benefit of the judgment of ***Deputy Inspector of Police and Another*** (supra), while passing the impugned order since the same was passed prior in time to the aforesaid judgment. However, learned counsel submits that the context of pendency of the criminal case against the petitioner was definitely taken into consideration. It was also considered by the Competent Authority that the acquittal of the petitioner by the Criminal Court, and in its opinion, was not a clean acquittal and as such, the period spent in suspension cannot be treated as one “*spent on duty*” and the plea for pecuniary benefits for such period was therefore rejected.



18. In rebuttal, learned counsel for the petitioner submits by bringing attention of this Court to the impugned order particularly page 98 where the Competent Authority has discussed the basis on which the representation of the petitioner was rejected. According to learned counsel, the Competent Authority fell in error by not considering that the acquittal by the Criminal Court was a clean and honourable one and by overlooking the said fact, had on its own without any basis or reasons, come to the conclusion that the said acquittal is not a clean acquittal.

19. Learned counsel also vehemently contended that the reading of Regulations 12 and 15 by the respondent is a complete violence to the language of the said Regulations itself. It is submitted that Regulation 15 sub regulation (1) does not specify as to whether the same would be considered as a case of exoneration in case of domestic inquiry alone. Since there is no such specification, even the cases where the charged officers have been acquitted by a Criminal Court ought to also be read into sub regulation (1) of Regulation 15. Read so, according to the learned counsel, there is no reason why the Competent Authority denied him the benefits for the suspended period by treating it as “*spent on duty*”.

20. That apart, learned counsel reiterates his arguments based on the judgment of the Supreme Court in ***Deputy Inspector of Police and Another*** (supra).

21. Learned counsel also vehemently argues that the petitioner was originally suspended on 25.09.1991 for the irregularities



alleged which was the subject matter of the domestic inquiry. The penalty order which was passed in the disciplinary proceedings was modified by the Reviewing Authority *vide* order dated 16.11.1993 whereby the order of dismissal as imposed upon the petitioner by the Disciplinary Authority was converted into various penalties which according to the learned counsel were minor penalties. He submits that same were already undergone by the petitioner. He submits that the first suspension order was revoked on 09.11.1992. He submits that on 26.11.1994, the second suspension order was issued by the respondent, which was essentially based on the chargesheet filed by the CBI on 31.08.1994. This suspension order too was revoked on 05.02.2003. It is this period that the petitioner sought from the Competent Authority to be treated as “*spent on duty*”. Since the impugned order rejected the said representation, the petitioner filed the present writ petition.

22. This Court has considered the arguments of the learned counsel for the petitioner as also the respondent and perused the documents on record and the judgment relied upon.

23. The short question involved in the present writ petition is as to whether for the second period of suspension from 1994 to 2003, based on the CBI filing its chargesheet on 31.08.1994, can be considered as “*spent on duty*” by the Competent Authority in terms of Regulation 15 of the said Regulations of the respondent.

24. It is not disputed by the respondents that the suspension which was originally ordered against the petitioner in the year



1991 in regard to the disciplinary proceedings initiated against him was revoked in the year 1992.

25. It is also not disputed that the penalty of removal from service as imposed in the year 1992 by the Disciplinary Authority was reviewed by the Reviewing Authority and modified into various penalties. The said modified penalties are as under:

“Having considered the matter in all respects, I am of the opinion that Shri Nath had not discharged his duties with devotion diligence and integrity as was expected of him. His pleas that he had fallen victim to the circumstances and that he had been dragged into a trap by another staff of the branch are not acceptable. An officer should always be careful in discharging his duties particularly when transactions relating to such large amount of money are involved. I therefore, feel that adequate penalties should be awarded to Shri Nath, but considering the circumstances and the submissions made by him, I am of the opinion that the penalty of dismissal may not be awarded to him. Accordingly, I, in exercise of powers conferred on me as Reviewing Authority, in terms of Regulation 18 of UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 modify the order passed by the Disciplinary Authority and award the following penalties to Shri Vishambhar Math in terms of Regulation 4 of UCO Bank Officer Employee (Discipline & Appeal) Regulations, 1976.

CHARGE No.1 BASIC PAY OF SHRI NATH BE REDUCED BY FIVE STAGES I.E. FROM 3300/-TO RS.2700/-.

CHARGE No.2 AN AMOUNT OF RS,1372/- BEING THE AMOUNT IRREGULARLY/WRONGLY-WITHDRAWN BY SHRI NATH FROM THE TWO RECURRING DEPOSIT ACCOUNTS BE



RECOVERED FROM HIM IMMEDIATELY IN ONE LUMPSUM.

CHARGE No.3 AN AMOUNT OF RS.11,250/- BEING THE AMOUNT IRREGULARLY CREDITED TO HIS OWN ACCOUNT BE RECOVERED FROM HIM IMMEDIATELY TO BE ADJUSTED APPROPRIATELY.

CHARGE No.4 BASIC PAY OF SHRI NATH BE REDUCED BY FIVE STAGES LE. FROM RS.3300/- TO RS.2700/-.

CHARGE No.5 BASIC PAY OF SHRI NATH BE REDUCED BY FIVE STAGES FROM RS.3300/- TO RS.2700/-

CHARGE No.6 AN AMOUNT OF RS.220/- BEING THE AMOUNT WRONGLY CREDITED TO S/B A/C 3269 TO THE DEBIT OF INTEREST PAID ACCOUNT BE RECOVERED FROM SHRI NATH IMMEDIATELY AND THE AMOUNT ADJUSTED APPROPRIATELY.

CHARGE No.7 THE AMOUNT OF RS.25,000/- BEING THE PROCEEDS OF CANCELLATION OF DEMAND DRAFT UNAUTHORIZEDLY CREDITED TO S/B A/c No.3222 BE RECOVERED FROM SHRI NATH AND THE AMOUNT ADJUSTED APPROPRIATELY.

CHARGE No.8 THE AMOUNT OF RS.20,000/- BEING THE AMOUNT OF WRONG CREDIT AFFORDED TO AN SAVINGS BANK ACCOUNT No.3222 ON CANCELLATION OF A MANAGER'S CHEQUE BE RECOVERED FROM SHRI NATH AND ADJUSTED APPROPRIATELY.

The Order dt. 9.11.1992 of the Disciplinary Authority



is therefore modified as above. The period of suspension will not be treated as the period spent on duty.”

26. It is also not disputed that the petitioner has already undergone the penalties as imposed *vide* the Reviewing Authority’s order dated 16.11.1993. The petitioner does not seek to challenge the same in the present writ petition. The only issue raised is in respect of as to how the period of suspension from 26.11.1994 through till 05.02.2003 is to be considered in view of the acquittal in the criminal case.

27. To understand the issue in the present petition, it would be apposite to consider the analysis and the findings recorded by the Criminal Court which was in *seisin* of the criminal case in which the petitioner was also arrayed as an accused.

28. In order to appreciate the contentions, it would be apposite to extract the relevant portions of the judgment dated 25.11.2011 passed by the Criminal Court:-

“12. PW68 Sh. Harkishan Kakkar has deposed that accused Vishambar Nath was posted as an officer in Rajindra Place Branch of UCO Bank. He used to supervise the passing of cheque after verifying the signatures of respective account holders. He has also deposed that accused V L Nagar was also working as Special Assistant in Rajindra Place Branch and was assigned the work of supervision of passing of cheque after verification of signatures of respective account holders. He has also deposed that these two officers (accused) used to do each other's work. Relevant portion of his statement is as under:



"I retired as Senior Manager in UCO Bank in June, 1999. I was posted as Senior Manager in UCO Bank, Rajindra Place Branch, during the period from November, 1989 to June or July, 1992. I was looking after the work of Manager. Accused V L Nagar who is present in court today (the witness has correctly identified) was working as Special Assistant in the same Branch during the aforesaid period. He was assigned the work of supervision of passing of cheques, after verification of signatures of the respective account holders of many saving bank accounts. Accused Vishambar Nath was Officer posted in the same branch during the same period. He used to supervise the passing of cheques after verification of signatures of respective account holders of mainly current accounts. The Officer was having more powers than of Special Assistant but these two accused persons used to do each other's work. Accused Vishambar Nath is not present in the court today but I can identify him, if shown to me. I do not remember the exact passing powers of accused V L Nagar as Special Assistant."

13. Except the above evidence prosecution has not produced any other evidence against accused Vishambar Nath on judicial file.

14. Prosecution has produced GEQD Sh. S K Saxena who has compared the specimen handwriting of accused and various other persons with the questioned handwritings. He has not given any opinion against accused Vishambar Nath. Even prosecution has not produced any



other witness acquainted with the handwriting of accused Vishambar Nath to prove his handwriting/signatures on any of the debit/credit vouchers/Cheque/draft. Prosecution has not produced any other witness to prove that accused Vishambar Nath was involved in the criminal conspiracy with his co-accused V L Nagar (now deceased).

15. Deceased accused V L Nagar has sent a letter confessing the fraudulent act committed by him which the prosecution has proved as Ex PW14/E wherein he has admitted the commission of entire fraud by him giving its minute details. He has admitted that by fraudulently making debit/credit/transfer vouchers he had obtained drafts from the bank and used for purchase of 18 plots for paying the price to the sellers by way of drafts. Even in this letter he has not mentioned name of accused Vishambar Nath as the person who participated in this fraud.

16. In view of above discussion it is clear that there is hardly any evidence against accused No.2 Vishambhar Nath on the judicial file with regard to his involvement in this conspiracy/fraud though there is abundance of evidence against accused V L Nagar (now deceased).

17. It is undisputed fact that both these accused being employees of UCO bank, which is a nationalised bank, are public servants. IO has not mentioned even a single word with regard to obtaining of sanction for the prosecution of both these accused in the charge sheet. However, sanction order for the prosecution of both these accused has been filed on the judicial file. Sanction for the prosecution of both these accused is accorded by Shri Krishan Kumar, General



Manager (Personal) on 30.12.93 but this order has not been proved/exhibited on the judicial file. Unfortunately IO has not even mentioned the name of Krishan Kumar in the list of witnesses. However, now in these facts and circumstances of this case, when there is hardly any evidence on the judicial file against accused No.2 Vishambhar Nath and accused V L Nagar has already expired, non examining of sanctioning authority and not proving of sanction order is immaterial.

18. In view of above discussion this court is of opinion that prosecution has utterly failed to prove its case, against accused No.2 Vishambhar Nath, therefore, he is acquitted of the charged offences. 19 File be consigned to record room."

29. The perusal of the said findings recorded make it clear that so far as the petitioner is concerned, there was no evidence found against him.

30. A perusal of the impugned order, particularly para 16 shows that there was no evidence in judicial file with regard to the petitioner's involvement in the conspiracy/fraud. On that basis, the Criminal Court in the penultimate paragraph has held that the prosecution has utterly failed to prove its case against the petitioner and consequently, the petitioner was acquitted of all charges.

31. By perusing the aforesaid findings and analysis of the Criminal Court, it can hardly be said that it was not a clean acquittal.

32. From the portion extracted above, it is clear that the CBI had no case against the petitioner. In such circumstances, the



Criminal Court was constrained to acquit the petitioner. Such acquittal cannot be but an honorable and clean acquittal. Having said that, it would also be relevant to note that the view taken by this Court above also finds support from the judgment of the Supreme Court in *Deputy Inspector of Police and Another* (supra) particularly paragraphs 24, 25 and 26 which dealt purely with what the expression “honorable acquittal” could be in the judicial opinion.

33. The relevant paragraphs of the aforementioned judgment are extracted hereunder:

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur v. Union of India [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari



[1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor [ILR (1934) 61 Cal 168] which is as follows : (Raghava case [1972 SLR 44 (SC)] , SLR p. 47, para 8)

“8. ... ‘The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.’” (Robert Stuart case [ILR (1934) 61 Cal 168] , ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile,



etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

34. So far as the other limb of the argument of the learned counsel for the respondent in respect of the petitioner undergoing major penalty is concerned, the same would be of no consequence since the petitioner has already undergone the penalties as imposed. As such whether the punishment imposed is a major or a minor penalty, has no impact in so far as the consideration of Regulation 15 is concerned. For the same reason, the argument based on Regulation 4 dealing with the penalties is equally not required to be considered since the same does not have any impact on consideration of Regulation 15.

35. The argument of learned counsel for the respondent in respect of the applicability of sub regulation 3(b), read with sub regulation (2) of Regulation 15, appears to be correct so far as the interpretation of the Regulations is concerned. However, with respect to its applicability on the petitioner this Court does not find any relevance thereto. Even if the argument of the learned counsel for the respondent in respect of sub Regulation 3(b) of Regulation 15, is taken on its face value, there is nothing to show that in the sub regulation (1) of Regulation 15, the consideration is only to an exoneration in respect of a domestic/disciplinary



proceedings. There is nothing to discern from the words employed in sub regulation (1) of Regulation 15 to show that the same is limited only to the exoneration in the domestic tribunal proceedings. However, even if it is held so, the same would still not disentitle the petitioner from the benefits of period being considered as “*spent on duty*”.

36. Whether it is sub-Regulation (1) or sub-Regulation 3(b) of Regulation 15, the Competent Authority was to consider the representation of the petitioner in the light of the facts which have arisen. The Competent Authority while passing its impugned order did not consider the fact that the first suspension had already been revoked by the time the CBI filed its charge sheet on 31.08.1994. The Competent Authority also overlooked the fact that the second suspension order was passed solely on the ground that CBI filed its chargesheet dated 31.08.1994 wherein the petitioner was arrayed as one of the accused persons. In case it is considered as a fresh suspension, there is no reason why the petitioner would not fall within sub regulation (1) of Regulation 15 of the Regulations of the bank.

37. That apart, the finding of the Competent Authority that the petitioner’s acquittal by the Criminal Court is not a clean acquittal seems to be to contrary to the findings of the Criminal Court *vide* its judgment dated 25.11.2011.

38. It appears that it is on an erroneous assumption that the representation of the petitioner was rejected and his suspension period was directed to be treated as “*not spent on duty*”.



2024:DHC:4443



39. In view of the aforesaid findings and analysis, this Court cannot but come to the conclusion that the findings recorded in the impugned order dated 11.05.2012 is contrary to the facts which are borne out from the record as also the judgment of the Criminal Court dated 25.11.2011.

40. As a consequence, the impugned order dated 11.05.2012 passed by the Competent Authority is set aside. The suspension period w.e.f. 26.11.1994 through till 05.02.2003 shall be considered as one spent on duty.

41. As an upshot of the said consequence, the petitioner would be entitled to all consequential benefits as he is found eligible for the said period treating the said period to have been spent as on duty.

42. The respondents are directed to work out the said entitlements in accordance with the law and its Regulations and release the same within a period of 8 weeks from the date of service of this judgment.

43. In view of the above, the petition is disposed of with aforesaid directions with no order as to costs.

TUSHAR RAO GEDELA, J

MAY 22, 2024

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