$~10

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

Decided on 22.01.2025

\+ W.P.(C) 8159/2018

JITENDRA KUMAR KAUSHIK .....Petitioner

Through: Mr. Ram Anugrah Singh, Mr. Vivek Singh Somvanshi, Ms. Alpana Kiran and Mr. Suyash Pandey, Advocates.

versus

UCO BANK .....Respondent

Through: Mr. Abdul Wahid, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner assails an order of dismissal from the services of the respondent-UCO Bank dated 28.12.2015, which has been affirmed by the Appellate Authority on 31.03.2016, and by the Reviewing Authority on 25.07.2017.

2. The petitioner joined the services of the respondent-Bank on 01.04.1994, and was subsequently promoted to the post of Assistant Manager, Model Basti, New Delhi Branch.

3. Upon a complaint of a customer, a show cause notice was issued to the petitioner on 04.07.2015, in which it was stated that he had committed various irregularities. A summary of the allegations mentioned against the petitioner in the said show cause notice are as follows:

a. On 27.05.2015, a customer of the respondent- Bank, namely, Mr.

Lekhraj Singh, visited the Branch to deposit a sum of Rs. 1,00,000/- in the account of his son, Mr. Narender Singh. He also handed over to the petitioner, a withdrawal slip for the sum of Rs. 50,000/- from his own account. The said amount was also to be deposited in the account of Mr. Narender Singh. The petitioner was requested to issue Fixed Deposit Receipts [“FDRs”] for the entire sum of Rs. 1,50,000/- from the account of Mr. Narender Singh. Although a cash receipt for the sum of Rs. 1,00,000/- was handed over by the petitioner to Mr. Lekhraj Singh, the amount was not deposited in the account of the Mr. Narender Singh and was retained by the petitioner. The sum of Rs. 50,000/- was withdrawn from the account of Mr. Lekhraj Singh but was also not deposited in his son’s account. The FDRs were not issued.

b. The petitioner took money from various customers of the respondent-Bank amounting to Rs. 1,70,000/-, Rs. 13,700/-, Rs. 39,700/-, Rs. 37,500/- and Rs. 1,19,000/- between 07.04.2015 and 21.05.2015, and credited them in his own account. Similarly, amounts of Rs. 36,000/-, Rs. 19,552/-, Rs. 29,500/-, Rs. 20,000/- and Rs. 70,000/- were taken between 15.04.2015 and 17.04.2015 and credited to another account of the petitioner himself. It is also alleged that the petitioner had borrowed a sum of Rs. 1,94,649/- from Fullerton India without permission of the competent authority.

c. The petitioner has deposited cash in his own accounts on several occasions between 01.04.2015 and 17.06.2015, the source of which has not been disclosed.

d. The petitioner took an amount of Rs. 21,900/- from a customer of the respondent-Bank, namely, Mr. Mahender Jain, on 08.05.2015, and issued a cheque to him. The cheque was submitted to the petitioner for collection in his account, but the petitioner neither credited it to the account of the customer, nor returned the cheque to him.

4. The petitioner replied to the aforesaid show cause notice on 13.07.2015. He has answered only the allegation with regard to money received from Mr. Lekhraj Singh. He admitted the aforesaid transactions but stated that the FDR was to be prepared in the name of Mr. Lekhraj Singh's daughter-in-law, and it took some time to join the account of daughter-in-law, with the account of her husband. The petitioner also enumerated various factors which have caused financial difficulty to his family.

5. A supplementary show cause notice was issued to the petitioner on 29.07.2015, in which it was alleged as follows:

a. The petitioner took a sum of Rs. 1,70,000/- on 05.04.2015 from another customer of the respondent-Bank, namely, M/s. Hovel International India, and credited it to his own account. An amount of Rs. 1,10,000/- was repaid to the said customer in cash, but a cheque for the balance amount of Rs. 60,000/- issued by the petitioner was dishonoured on account of insufficient funds.

b. The petitioner had taken a total amount of Rs. 2,10,000/- from another customer of the respondent-Bank, namely, Mr. Mohamed Ibrahim. These amounts were also returned by cheques, which have been dishonoured.

c. Another customer of the respondent-Bank, namely, Surender Yadav, reported that the petitioner had taken an amount of Rs. 10,000/- from him in cash on 05.06.2015, which was returned on 10.07.2015.

d. The petitioner had taken another sum of Rs. 37,500/- on 20.05.2015 from Mr. Atul Gupta, another customer of the respondent-Bank, by cheque, which was credited to the petitioner's account. The petitioner issued a cheque for the same amount in favour of Mr. Gupta. Mr. Gupta handed over the cheque to the petitioner for collection into his account, but he neither credited it to the customer's account, nor returned the cheque to him.

6. The petitioner's reply dated 03.08.2015, to the supplementary show cause notice, does not dispute any of the aforesaid transactions, but contends that the petitioner has paid back the amounts, apart from the remaining Rs. 40,000/- to M/s. Hovel International India, Rs. 50,000/- to Mr. Mohamed Ibrahim, and Rs. 37,500/- to Mr. Atul Gupta. In the said communication, the petitioner admits that he is unable to pay back the amount he has taken from the aforesaid customers to meet the expenditure of his house. He seeks to make repayment to the customers from amounts to be paid to him by the respondent-Bank on account of arrears and bonus.

7. On 26.08.2015, the respondent-Bank issued a communication to the petitioner, stating that it proposed to hold an enquiry against him under Regulation 6 of the UCO Bank Officer Employees' (Discipline and Appeal) Regulations, 1976. Eight allegations were enumerated, which were on the same lines as the facts mentioned above. As a consequence,

four charges were framed against him, which read as follows:

> "*1. Shri Jitender Kumar Kaushik (EMP No. 43446) had failed to discharge his duties with utmost integrity, honesty which is violative of Regulation 3 (i) of UCO Bank Officer Employee's (Conduct) Regulations, 1976, as amended.*
>
> *2. Shri Jitender Kumar Kaushik (EMP No. 43446) had grossly abused his official position or powers for personal gain which is violative of Regulation 3(i) of UCO Bank Officer Employee's (Conduct) Regulations, 1976, as amended.*
>
> *3. Shri Jitender Kumar Kaushik (EMP No. 43446) had failed to ensure and protect the interests of the Bank which is violative of Regulation 3(i) of UCO Bank Officer Employee's (Conduct) Regulations, 1976, as amended.*
>
> *4. Shri Jitender Kumar Kaushik (EMP No. 43446) had acted in a manner unbecoming of a bank officer which is violative of Regulation 3(i) of UCO Bank Officer Employee's (Conduct) Regulations, 1976, amended.*"

8. The petitioner submitted his defence on 04.09.2015, in which he stated *inter alia* as follows:

> "*<u>As I have mentioned in my letter that I had to take money on credit from some customers in view of my financial condition, but I could not repay above money to them because of which customers have presented a written complaint against me. Applicant has refunded back of almost all the customers and only 1-2 customers are left whose money is to be refunded. At present I am unable to pay back their amounts because I do not have any money to pay to them</u>. I have already requested you in my earlier letter that you may pay money to above customers from my remaining salaries either yourself or kindly release my payment so that I myself may refund the amounts of above customers.*"

The petitioner had thereafter again alluded to his precarious financial condition.

9. Departmental enquiry was commenced under intimation to the petitioner dated 09.11.2015. The petitioner submitted a statement of defence to the Enquiry Officer on 08.12.2015, in which the petitioner admitted the receipt of the aforesaid amounts by way of borrowing from

the respondent-Bank's customers. It was stated that the amounts have been repaid to the customers, except Rs. 40,000/- to M/s. Hovel International India, and Rs. 50,000/- to Mr. Mohamed Ibrahim. The communications contain an express admission that the petitioner had taken money from the customers, which is sought to be explained on the basis of his financial condition.

10. The Enquiry Officer submitted a report dated 10.12.2015, which records that an enquiry was conducted in seven sittings, and the petitioner did not produce any evidence in his defence. Documents produced by the respondent-Bank were marked as exhibits MEX I(i) to MEX 7(ii). The Enquiry Officer found all the eight allegations against the petitioner to be proved. The enquiry report was communicated to the petitioner, who submitted a further representation dated 14.12.2015, which is on the same lines as the defence summarised above.

11. The disciplinary authority, by the impugned order dated 28.12.2015, concurred with the findings of the Enquiry Officer, particularly that the petitioner had admitted the transactions. The disciplinary authority thereafter recorded the opinion that the petitioner has abused his official position and, for personal gain, unauthorisedly and fraudulently retained customer's funds with himself, resulting in wrongful gain to himself. Finding the charges against the petitioner to be proved, the disciplinary authority ordered his dismissal from service, with the period of suspension not to be treated as on duty.

12. In the appeal filed by the petitioner, the petitioner has alleged, for the first time, that he had personal relationship with the concerned customers. It is admitted that the amounts were taken for his personal use

and contended that the respondent-Bank bears no liability in this regard as the responsibility to repay lies with the petitioner.

13. The appellate authority concurred with the findings of the disciplinary authority, and came to the conclusion that the petitioner had committed grave irregularities and gross abuse of his official position. The appeal was, therefore, dismissed.

14. The petitioner's request for review was also dismissed by order dated 25.07.2017.

15. Having heard learned counsel for the parties, I see no reason to interfere with these concurrent findings of the disciplinary authority, appellate authority, and reviewing authority in exercise of jurisdiction under Article 226 of the Constitution. The petitioner was serving as the Assistant Manager of a bank, in which capacity he was expected to act with utmost good faith when dealing with customers' funds. He has admitted transactions of appropriation of customers' funds to his own account, although the amounts have subsequently been repaid, to a substantial extent, and characterised as borrowings. The transactions, as noted above, were not one or two in number but repeated.

16. Mr. Ram Anugrah Singh, learned counsel for the petitioner, has drawn my attention to Regulation 15 of the UCO Bank Officer Employee (Conduct) Regulations, 1976, the relevant extracts whereof are as follows:

"*15. Lendings and Borrowings:*
<u>No officer employee shall, in his individual capacity</u> *-*

> *"(i)* ***<u>borrow or permit any member of his family to borrow or otherwise place himself or a member of his family under a pecuniary obligation</u>*** *to a broker or a money lender or a subordinate employee of the bank or* ***<u>any person, association of persons, firm, company or institution, whether</u>***

incorporated or not having dealings with the bank;
(ii) buy or sell stocks, shares or securities of any description without funds to meet the full cost in the case of a purchase of scrips or delivery in the case of a sale;
(iii) incur debts at a race meeting;
(iv) lend money in private capacity to a constituent of the bank or have personal dealings with such constituent in the purchase or sale of bills of exchange, Government paper or any other securities; and
(v) guarantee in his private capacity the pecuniary obligations of another person or agree to indemnify in such capacity another person from loss except with previous permission of the competent authority :
Provided that an officer employee may, give to or accept from a relative or personal friend a purely temporary loan of a small amount free of interest, or operate a credit account with a bonafide tradesman or make an advance of pay to his private employee.
Explanation: However, every officer employee shall report, every transaction as mentioned above, to the competent authority if the value of such transaction exceeds Rs.25000/-
Provided further that an officer employee may obtain a loan from a co-operative credit society of which he is a member or stand as a surety in respect of a loan taken by another member from a co-operative credit society of which he is a member."

[Emphasis supplied]

17. Mr. Singh submits that the customers in question were personal friends of the petitioner and fall within the proviso to the said regulation. However, I find no factual basis for this submission made in the responses to the show cause notices, the statement of defence, or any other material produced before the Enquiry Officer. A bald allegation to this effect has been made for the first time in the appeal filed by the petitioner against the order of the disciplinary authority, and has been repeated in the writ petition. The number of transactions of the same nature admitted by the petitioner, which involves different customers/constituents, also belies the aforesaid submission.

18. Mr. Singh lastly submitted that the Court may consider the proportionality of the punishment imposed upon the petitioner. It is well settled that interference with the quantum of punishment by the writ

Court is justified only if the conscience of the Court is shaken by a penalty which is not commensurate with the charges proved or on grounds of parity with other employees. The charges proved against the petitioner, having regard to the position he occupied in the respondent-Bank, do not meet this high standard. The dismissal from service, in these facts, was, in my view, the only punishment commensurate with these charges.

19. For the aforesaid reasons, the petition is found to be utterly unmerited and is dismissed.

PRATEEK JALAN, J

JANUARY 22, 2025/*MR/JM/*