(2011) 09 AHC CK 0447

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20932 of 2006

Braj Bhushan Shukla APPELLANT

Vs

UCO Bank and Others RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32
UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 17, 24, 3, 3(1), 3(2)

Citation : (2011) 10 ADJ 716

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Vikas Budhwar, learned counsel for the petitioner. Shri Manoj Misra appears for the respondents-bank.

2. This writ petition is directed against the order dated 16.7.2005 passed by the Asstt. General Manager, United Commercial Bank, Regional Office, Varanasi, by which as a disciplinary authority, he has imposed punishment on the petitioner of dismissal, which shall ordinarily be a disqualification for future employment on charge Nos. 1 and 3 for having misbehaved and manhandled a customer of the -bank; and lowering of three stages from the present pay on charge No. 2 relating to representation made by the petitioner to the Asstt. General Manager, Varanasi and endorsing a copy thereof General Manager (Personnel) Head Office, Calcutta, by name, for non-sanction of overdraft limit to him. The General Manager (Operation. 1) (Appellate Authority in appeal) on 6.10.2005 modified the punishment on charge Nos. 1 and 3 to compulsory retirement and maintained the punishment on charge No. 2.

3. The petitioner was initially appointed on 7.6.1973 in the clerical cadre of the bank at Rohtak, Haryana. He was promoted to Junior Management Grade, Scale-1 on 1.7.1980, and in Management grade Scale-2 on 19.12.1997. He was

posted as Incharge Extension Counter, Mohaddipur, Gorakhpuron 9.12.2002 and was placed under Shri N.K. Pandey, who is alleged to be junior to him and was serving as Branch Manager. The petitioner was required to perform the supervisory work manually as there were no computers in the branch. Out of the three staff members at the extension counter, the permanently posted incharge got themselves transferred to the main branch. It is alleged that Shri Atma Ram Sharma, one of the previous incharge had attempted suicide and resigned from the bank service. It is also alleged that since the extension branch was having heavy rush of work with more than 70 vouchers per day, no one was prepared to work at the Extension Centre.

4. A charge-sheet dated 30.7.2004 was served upon the petitioner with following allegations:

Shri B.B. Shukla (PFM No. 14670) Incharge, S H KIC Extension Counter, Mohaddipur of Gorakhpur Branch had indulged in various acts of omission and commission in the bourse of his duties for which the following allegations have been levelled against him:

1. (a) That on 29.3.2003, Sh BB Shukla misbehaved and also manhandled Mr Alok Pandey husband of Mrs Ranjana Pandey who came to know the fate of instruments deposited in Current A/s No. 3 ''M/s Ranjana Interprises'' on 17.3.2003 with him. Before, this Mrs Ranjana Pandey had also visited thrice to know the fate but no satisfactory reply was given by Sh B B Shukla to her rather misbehaved with her on her third visit. Thereafter on 29.3.2003, her husband has to come and Sh Shukla instead of providing customer service for redressing their grievance, resorted to mis-behaviour and manhandling with Mr Alok Pandey. Sh Shukla caused hurt and injury to Mr Pandey and tore his shirt also during the course of manhandling. Mr Pandey managed his escape with difficulty from the bank premises. This is most unwanted and serious act on the part of Sh Shukla in the Bank premises with a customer and unbecoming of a bank officer.

(b) Thereafter, Mr Pandey went to Police Station and lodged FIR 60/2003 on 29.3.2003 at 12.30 p.m. against Sh Shukla narrating the whole incident.

(c) Subsequently, Sh Shukla also went to Police Station and lodged FIR on 29.3.2003 at 1.15 p.m. against Mr. Pandey.

(d) Sh B.B. Shukla has not reported the above incident to the controlling office and has thus concealed the fact. Not only this, he has acted otherwise to lodge FIR against the customer without seeking prior approval from the Controlling Office.

(e) Aggrieved with the mis-behaviour/ manhandling on the part of Sh Shukla, they closed their account on 10.4.2003 with the bank.

2. Sh B B Shukla had represented vide his letter dated 17.7.2003 by addressing to AGM, Varanasi and endorsing the copy thereof to the then General Manager (Personnel), Head Office, Kolkata by name, for non-sanction of overdraft limit to

him in terms of Head Office guidelines, falsely stating that three is no charge-sheet pending against him. Whereas, the fact remained that a charge-sheet dated 20.12.1999 (Letter of imputation/ lapses) was already lying pending against him for alleged disorderly behaviour as System Administrator for disturbing routine and customer service of Allahabad branch. Thus he deliberately concealed material information from the higher office by falsely representing the facts. Besides, he had already indulged himself in the incidence mentioned in (1) above for which FIRs have been recorded.

Asstt. General Manager

(Disciplinary Authority)

5. The petitioner submitted his reply/ objections to the charge-sheet on 13.8.2004 and demanded documents and list of witnesses, which was not supplied with the charge-sheet as well as preliminary investigation report. He protested for issuing charge-sheet in the end of July 2004, in respect of incident on charge Nos. 1 and 3, which is alleged to have happened on 29th March, 2003. It was stated by the petitioner that his son is pursuing study of B.Tech. for which the petitioner was required to pay the fees. When the petitioner applied for overdraft facility generally given to bank employees, it was denied to him. He further alleged that the allegations of mis-behaviour and alleged scuffle with the customer are not allegations of moral turpitude, on which the enquiry was sought to be proceeded against him.

6. The petitioner was supplied with the First Information Report alongwith the letter of the Asstt. General Manager (disciplinary authority) dated 11.10.2004. In the First Information Report lodged by Shri Alok Pandey, a customer of the bank, it was alleged by him that he and his wife have current accounts in the Charphatak Branch of UCO Bank at Gorakhpur. On 17.3.2003 they deposited two drafts bearing Nos. 41884 and 84188. His wife went to the bank for receiving payment on several dates, on which the Manager Shri Shukla informed that the amount has not been credited to their account. For the third time, when his pregnant wife went to the branch, the Branch Manager misbehaved with her. When the complainant himself went on 29.3.2003 at 10.15 a.m. to inquire about his draft, the Manager Shri Shukla (the petitioner) misbehaved with him and threatened to kill him. He broke a glass with his hand to implicate him. He tore his shirt and hurt him. He somehow come out of the bank with the help of the bank employees and was reporting the matter to the police.

7. In the counter allegation made by the petitioner in the FIR lodged by him, at 1.15 a.m. on the same day at the same police station, he informed the police that he is serving as Branch Manager in the Mohaddipur Branch of the Bank. Shri Alok Pandey has account No. 345 in the bank; he came to the bank at 10.15 a.m. and compelled him to wrongly collect the cheque. When the petitioner refused to oblige him, he started abusing and beating the petitioner on which the petitioner suffered injuries on his face and fell down on the table, on which the

table glass was broken. He requested to lodge FIR, get him medically examined and to take necessary steps to punish the guilty person.

8. In his detailed reply to the charge-sheet submitted by the petitioner on 20.10.2004 he stated that Station Officer, Cantt. had earlier refused to lodge his FIR and kept him waiting for two hours. When he came to know from the clerk of the cantt. police station that the CO. Cantt. is closed relative of Shri Alok Pandey against whom the petitioner has lodged complaint, he requested the AGM, Varanasi Region Shri B.C. Shah to help him, who reached at 1.00 p.m. All the three persons were at the police station and had tried to register FIR much before the FIR of Shri Alok Pandey was registered. The police deliberately registered the FIR of the petitioner later to the FIR of Shri Alok Pandey at 12.40 p.m. The petitioner further stated that preliminary investigation report is in his favour and that there was no basis to give him charge-sheet, which was also incomplete. The charge-sheet does not contain the list of witnesses and documents relied upon to prove the charges. Instead of giving him list of witnesses, photocopy of the papers have been supplied.

9. On the merits of the charges the petitioner stated that account of M/s Ranjana Interprises was irregular; the clearing register of 17.3.2003 will ascertain that the cheques were sent for collection on the same day, when they were received. The collections were made and the cheques were deposited in their account on 28.3.2003. The petitioner demanded the statement of account of Shri Alok Pandey and Smt. Ranjana Pandey to establish that there was overdraft in their account, due to return of cheques for a long period. He stated that instead of taking action on his complaint made against Shri Alok Pandey and Shri Ranjana Pandey and registration of FIR in the presence of the Asstt. General Manager, the petitioner is being blamed for misbehaving with the customers.

10. The petitioner received a reply from the Asstt. General Manager of the bank at Varanasi on 13.12.2004 informing the petitioner that the bank is not happy to find the petitioner''s indifferent behaviour against the Senior Manager of his own branch, who, had not refused to overdraft to him and that since the enquiry has been set up, all documents and witnesses in the case will be given to him in the enquiry. The appointment of retired officer as enquiry officer was in terms with the amended Regulation 6(2) of the UCO Bank Officer, Employees (Discipline and Appeal) Regulations, 1976. The Bank Circular dated 20.10.2001 empowered the bank to empower the retired officer, and on which 33 retired officers have been empaneled to be appointed as enquiry officers.

11. On 31.12.2004 the petitioner was placed under suspension.

12. In para 18 of the writ petition it is stated that the enquiry, which began on 3.12.2004 were concluded on 18.3.2005. The presenting officer and the petitioner submitted their written briefs on 29.3.2005 and 5.4.2005 respectively. The enquiry report was submitted on 6.5.2005.

13. The enquiry officer reported to the disciplinary authority that since the

charged officer denied all the charges, he was asked to suggest the name of his defence representative, and on his request Shri A.P. Singh, DCO Recovery, Regional Office, Lucknow was allowed to defend him. The documents marked as MEx-1 to MEx-18. Shri Alok Pandey (husband of Smt. Ranjana Pandey) and Shri R.P. Singh, Head Cashier were named as witnesses to prove the charges. The charged officer submitted in his defence documents, marked as DE-1 to DE-21 and gave the names of Shri N.K. Pandey, Manager, Campier Ganj and Mr. Sadanand, Cash Peon posted at Gorakhpur Branch. He also gave the name of some outsiders. The objection of the presenting officer not to allow the witnesses other than the staff was overruled by the enquiry officer. Thereafter referring to and narrating statement of allegations, articles of charges, presentation of case by the presenting officer, the allegation 1(a) to 1 (e), 2 and 3 and statement of witnesses in his finding, and referring to the arguments, the enquiry officer reported that allegation 1 (a) to be partly proved; allegation 1 (b), (c) and (e) to be proved; and allegation 1 (d) to be not proved. He found allegation No. 2 to be partly proved. The reasons of assessment of the enquiry officer on allegation No. 1 (a), which is main allegation are quoted as below:

Assessment of Enquiry Officer

Having gone through the arguments, written briefs submitted by the Presenting Officer and Defence as well as the deposition by witnesses I come to the conclusion that the allegation No. 1 (a) against Mr. B.B. Shukla is partly proved.

Reasons of my assessment

1. The deposition made by the witness M:W. 1 namely Mr. Alok Pandey indicates that on 29.3.2003 Shri B.B. Shukla misbehaved and also manhandled Mr. Alok Pandey but the MW2 namely Mr. R.P. Singh has stated that when he was working at the cash counter he heard some unusual noise and saw that both were in coalition with each other. He separated them. The witness No. DW1 Mr. N.K. Pandey has also stated that he was intimated on telephone that some ''Maar-peet has happened at the counter and immediately went there and heard about the incident and saw broken glass of his table, dust was seen on Safari Suit and there were sign of hurt and blood at the face of Mr. Shukla Mr Sada Nand (DW 2) has narrated in his deposition that Mr. Alok Pandey came at the bank in the morning after the opening of the bank and sat on the chair in front of the Manager''s table and were talking in peaceful manner but suddenly Mr. Alok Pandey started hot talks and attacked on the face of Manager Sahib through his hands and Manager sahib fell in and his spectacle also fell. He helped him but Manager sahib also raised his hands to beat Mr. Alok Pandey but Mr. Pandey again hit by his foot and Manager Sahib fell on his table and the glass has broken. Mr. Alok Pandey again hit Manager Sahib by his hands then Mr. R.P Singh came and they separated them.

Thus it is proved that some ''Maar-peef ''has happened between Mr. Alok Pandey and Mr. B.B. Shukla and both engaged themselves in fighting with each other.

This situation should have been avoided Mr. Shukla could not control himself.

2. It is not proved that Mr. Alok Pandey came to know the fate of instruments deposited in Current A/c No. 3 ''M/s Ranjana Interprises'' on 17.3.2003 with him because Mr. Alok Pandey himself has stated in his deposition that he went to bank with the intention to close the account of M/ s Ranjana Interprises and not for knowing the fate of the instruments.

3. It is also not proved that Mrs. Ranjana Pandey had also visited thrice to know the fate but no satisfactory reply was given by Mr. B.B. Shukla to her rather misbehaved with her on her third visit as Mrs. Ranjana Pandey could not be presented during enquiry and no other witness was produced by the Presenting Officer to substantiate the charge.

4. It is also not proved that Mr, Shukla instead of providing customer service for redressing their grievance, resorted to miss behaviour and manhandling with Mr. Alok Pandey on 29.3.2003 because the witnesses produced by the management and by the Charge-sheeted Officer have confirmed that some ''Maar-peet has happened and both were conflicting with each other and Mr. Alok Pandey has attacked on Mr. Shukla.

5. It is also not proved that Sh. Shukla caused hurt and injury to Mr. Pandey and tore his shirt also during the course of manhandling because no medical report of any hurt and injury to Mr. Alok Pandey was produced by the Presenting Officer. On the contrary Mr. B.B. Shukla has produced his medical report prepared by CMO. It is also not proved that Mr Shukla tore his shirt as no where Mr Alok Pandey has narrated that his shirt was torn by Mr. Shukla. On the other hand Mr. Sada Nand has stated in his deposition that Mr. Alok Pandey left the bank abusing and tearing his clothes.

6. It is a so not proved that Mr. Pandey managed his escape with difficulty from the bank premises as no where he has mentioned that he escaped himself with difficulty. The witnesses, of Mr. R.P. Singh and Sada Nand have deposed that they separated them and Mr. Alok Pandey left the bank.

7. The contention of the Presenting Officer that statement of Shri Sada Nand cannot be considered to be true and should be considered as under undue influence and guidelines cannot be accepted as Mr. Sada Nand was present at the time of incident.

14. On allegation No. 1 (b) relating to registration of FIR by Shri Alok Pandey, the enquiry officer found the fact of registering FIR to be proved. The reasons of his assessment are quoted as below:

Reasons of my assessment

1. The Presenting Officer produced MEx 7 i.e. NCR/FIR No. 60/03 lodged by Shri Alok Pandey against Mr. Sri B.B. Shukla which confirms that Mr. Alok Pandey lodged FIR at Cantt. Police Station.

2. The Defence Representative also submitted that Mr. Alok Pandey went to Police Station and lodged FIR.

3. The witnesses namely Sri Alok Pandey, Sri R.P Singh, Sri N.K. Pandey and Sri Sada Nand have also confirmed that Mr. Alok Pandey went to Police Station and lodged FIR.

4. The contention of the Defence that Mr. Pandey realized the legal implications of the incident committed by him and therefore he went to Police Station and lodged FIR to misled and safe guard himself appears to be misleading as on the contrary Mr. Pandey has stated that he went to Police Station keeping in mind the threatening given by Mr. Shukla.

15. On allegation 1 (c) found to be proved the enquiry officer gave the reasons of his assessment as follows:

Reasons of my assessment

1. The Presenting Officer has confirmed that Mr. B.B. Shukla lodged FIR at Cantt Police Station and in support he produced the photo copy of FIR (ME x 8). In his written he has also repeated the same matter.

2. The Defence Representative has also stated that the FIR was lodged by Sri B.B. Shula as he has suffered grave injuries and to save the image of the bank and also there was damage to the bank''s property.

3. The witnesses have also pointed out during their examination/cross-examination that FIR has been lodged by Mr. B.B. Shukla.

4. In his written brief Mr. B.B. Shukla has also declared that he went to Police Station alongwith Mr. N.K. Pandey and lodged FIR against Mr. Alok Pandey.

5. It is surprising that whey the Charge-sheeted Officer denied these two allegations during the proceedings on 3.12.2004 while the facts that he and Mr. Alok Pandey have lodged FIRs were well known to him.

16. On allegation 1 (d) for not reporting the incident to the controlling office, the enquiry officer did not find the charge to be proved as he found that the incident was reported on telephone by the petitioner to the Officiating Senior Manager of Gorakhpur Branch, under whose control the said extension counter was functioning. The FIR was lodged after obtaining instructions from the Regional Office, Varanasi, and the copies of the FIR were sent to the regional office, which confirmed that prior permission of AGM was obtained. The witness Shri N.K. Pandey, Senior Manager (Officiating) and Shri Sadanand had confirmed that they had accompanied the petitioner at the time of lodging FIR and which indicates that the incident was reported by the petitioner to the higher authorities. On allegation No. (e) that on account of mis-behaviour/ manhandling on the conduct of Shri Shukla, the customer closed their account on 10.4.2003 with the bank, the enquiry officer found that the charge was proved from the documents that the account of M/s Ranjana Interprises was closed on 10.4.2003. They were not

interested to maintain relations with the bank. The statement given by Shri M.K. Pandey also indicated that there was some quarrel with regard to the cheque deposited by Mr. Alok Pandey and that it was normal reaction of the customer after such an incident to close the account 12 days after happening of the incident.

17. On allegation No. 2 regarding representation made by the petitioner on 17.7.2003 for non-sanctioning of overdraft to him, to AGM Varanasi and endorsing, copy to the General Manager (Personnel), the enquiry officer found the charge to be proved for the reasons as follows:

Reasons of my assessment

1. It is evident that Mr. B.B. Shukla has not written any letter dated 17.7.2003 by addressing to AGM Varanasi but plea given by the Presenting Officer that MEx 14/1 and MEx 14/2 dated 17.6.2003 and the letter dated 17.7.2003 (MEx 18/1 and 18/2) is the true copy of the same in which date is not visible clearly and it was copy sent to Shri Kalyan Mukherjee (GM, Personnel) Head Office Kolkatta for instructions for sanction of overdraft limit, cannot be ignored.

2. In the said letter it is clearly stated that no charge-sheet indicating/ involving moral turpitude has been issued to him during his entire life and no charge-sheet is pending against him in terms of the Regulation 6 of the UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976, while a charge-sheet dated 20.12.1999 was pending against him and the final order in this case was passed by Disciplinary Authority on 14.10.2003.

3. The contention of the Charge-sheeted Officer that no where he has mentioned/ written that letter of imputation under Regulation (8) of the UCO Bank Officers Employees (Discipline & Appeal Regulations) 1976 is pending against him appears to be misleading as he has not mentioned this point in his letter which should have been mentioned and this amounts to concealment of material information from the higher office.

4. The contention of the Charge-sheeted Officer that Letter of imputation dated 20.12.1999 has been issued under regulation 8 and not 6 of the UCO Bank Officers Employees (Discipline and Appeal Regulation) 1976 is correct but this information should have been given by the Charge-sheeted Officer in his letter that a letter of imputation dated 20.12.99 under Regulation 8 is pending against him.

5. The argument submitted by the Charge-sheeted Officer in his written brief that the entire letter of imputation dated 20.12.1999 is subjudice now vide writ petition No. 15782/04 filed in the Honorable High Court of Allahabad under such circumstances neither there was any necessity not any jurisdiction of the P.O. to discuss the subject-matter of the letter of imputation appears to be baseless because the charge-sheet has been issued before the filing of writ petition.

18. On charge No. 3 relating to the petitioner''s mis-behaviour and manhandling

with the customer on the premises, the enquiry officer found the charge to be proved on his discussion on allegation No. 1 (a).

19. The petitioner submitted his representation to the enquiry report served by him, running into 57 pages on 16.6.2005. He alleged in his reply that the findings are perverse. He never assaulted.Shri Alok Pandey. It was Shri Alok Pandey, who had assaulted the petitioner on which the matter was immediately reported to Shri N.K. Pandey, Senior Branch Manager. The petitioner informed the matter to the Regional Office, Varanasi on telephone on which he was advised to lodge FIR against Shri Alok Pandey. Had he misbehaved with the customer, the Regional Office, Varanasi would have immediately suspended him and started disciplinary proceedings. A false and fabricated charge has been cooked up against him, for having misbehaved and assaulted Shri Alok Pandey. The petitioner submitted that Shri Alok Pandey had assaulted him in a planned and calculated manner during the bank hours and this fact was established by the medical report of the Chief Medical Officer, Gorakhpur and the staff member Shri Sadanand. The petitioner had sent copy of his FIR alongwith medical report to the District Magistrate, Deputy Inspector General of Police and Inspector General of Police, Chief Minister, U.P. and Home Minister, Government of India as the Gorakhpur Police was not taking any action. The C.O. Cantt, Gorakhpur had closed relations with Shri Alok Pandey. The petitioner had earlier rectified a fake credit of Rs. 2000/ - in the account of M/s Ranjana enterprises and charged service charges of Rs. 600/ - within three months of his joining at the extension counter. The petitioner had also debited a cheque of Rs. 2000/- in his saving account No. 346, which was bounced in August, 2002 prior to his joining. This bounced cheque was not debited due to Mr. Alok Pandey''s relationship with Head Cashier Shri R.P. Singh and this led to the allegations and charges made by Shri Alok Pandey against him.

20. The disciplinary authority accepted the report of the enquiry officer and based on the allegations made against him amended the charges before considering the matter of punishment. The charges as amended by the disciplinary authority are quoted as below:

Based on the above allegations, the following 3 charges were levelled against Sh B.B. Shukla in terms of Regulation 3 read with Regulation 24 of UCO Bank Officer Employees'' (Conduct) Regulations, 1976, as amended:

4(2)(a) Sh B B Shukla misbehaved/ manhandled with the customers and thus did not maintain good conduct and discipline and show Courtesy and attention to all persons in all transactions and negotiations while dealing with the customers which is violative of Regulation 3(2) of UCO Bank Officer Employees'' (Conduct) Regulations, 1976, as amended.

4(2)(b) Sh B B Shukla concealed the incidence of mis-behaviour with the customer, lodgment of FIRs thereof (by him and against him) and pendency of charge-sheet against him for sanction of overdraft to him, from the bank. He did not seek permission from bank to lodge FIR against the customer. Thus he did not discharge his duties with utmost integrity, honesty, devotion and diligence which is violative of Regulation 3 (1) of UCO Bank Officer Employees'' (Conduct) Regulations, 1976, as amended.

4(2)(c) Sh B B Shukla misbehaved/manhandled with the Bank''s customer on the premises of the Bank and thus acted in a manner unbecoming of a Bank Officer which is violative of Regulation 3(1) of UCO Bank Officer Employees'' (Conduct) Regulations, 1976 as amended.

21. The disciplinary authority, thereafter, found charges and amended charges of mis-behaviour to be proved against the petitioner. The disciplinary authority observed that the petitioner had misbehaved and manhandled the customer, which is an extreme act and unwarranted from an officer of the bank, to cover misdeeds. He concealed the issuance of an earlier charge-sheet while applying overdraft limit from the bank contrary to the fact that the charge-sheet dated 20.12.1999 was issued and pending against him. He thus committed grievous/ serious act, which cannot be overlooked and deserve to be dealt commensurate with seriousness and gravity of the misconducts and thus punished the petitioner at charge Nos. 1 and 3 with dismissal, which shall ordinarily be a disqualification for future employment and on charge No. 2 for lowering of three stages from the present pay.

22. The petitioner''s appeal found favour with the appellate authority only to the extent that the punishment of dismissal was reduced to the punishment of compulsory retirement. The appellate authority after observing that a retired officer of the Bank could be appointed as enquiry officer and that inspection of document was allowed and enquiry proceedings were conducted in fair manner in which the petitioner was given an opportunity to defend himself and to present his case, did not find merit in the contention that the findings of the enquiry officer were not based on management exhibits or that the petitioner''s misconduct was not corroborated by the management witnesses. He observed that in the service oriented institutions like banks, functioning in highly competitive environment, indulging in acts detriment to the interest of the bank/ customer adversely affect bank''s image in the eyes of the public, resulting in loss of bank''s business/ growth. Bank cannot afford such employees, whose continuance would be detriment to the interest of the bank. The appellate authority further observed as follows:

The past record of Shri B.B. Shukla was also not free from adverse remarks and disciplinary actions were taken against him for misconducts, committed. The CSOE has not shown improvement in his behaviour, despite having been given opportunities to mend his behaviour. However, I find that there is no vigilance angle involved in the subject case and it is a case of non-vigilance disciplinary action for mis-behaviour on the part of the CSOE. The bank has not been put to any financial loss on account of this act of his.

In view of the above, I have given a sympathetic consideration to the submissions made by the CSOE in his appeal as aforesaid. I have also taken a compassionate view o the matter to modify the punishment awarded by the DA.

I, therefore, in exercise of the powers vested in me as Appellate Authority, vide Regulation 17 of UCO Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976, as amended, pass the following order:

Charge No. 1

Proved

Compulsory retirement

Charge No. 2

Partly Proved

Lowering of three stages from the present pay

Charge No. 3

Proved

Compulsory retirement

The above penalties will have concurrent effect.

Sd/-III. General Manager (Operation-I) (Appellate Authority)

23. Learned counsel for the petitioner submits that the entire facts were twisted to accuse the petitioner for having misbehaved with and manhandled a customer of the bank. Infact the petitioner was beaten up by the customer for the delay in debiting cheques for which the petitioner could not be faulted. The petitioner sufferred injuries in which his face was covered with the blood. He had fallen on the table, on which the glass was broken. The petitioner immediately informed Regional Office and on the instructions of the Regional Office, he went to lodge FIR in the police station, where he and senior officers including Senior Branch Manager were asked to wait for two hours by the Circle Officer, who was closely related to customer Shri Alok Pandey. The police deliberately managed to register the report of the petitioner later to the report of Shri Alok Pandey. The account of M/s Ranjana Interprises operated by Shri Alok Pandey was highly irregular. The customer misbehaved with the petitioner and had beaten him up for which the petitioner has been made to suffer. It is a case in which the victim has received punishment. The witnesses Shri Sadanand and Shri M.K. Pandey had supported him, whereas Shri R, P. Singh did not support him as the petitioner has made certain allegations against him in the past. The staff witness Shri Sadanand had clearly stated that Shri Alok Pandey started beating the petitioner (Manager Saheb), who fell down and his spectacles also fell. He had helped the petitioner to get up on which Shri Alok Pandey again started hitting him by foot, on which the petitioner had again fallen down on his table and the glass was broken. Shri

Alok Pandey again started hitting the petitioner on which Shri R. P. Singh separated them. On these allegations the petitioner could never be punished. The findings after recording evidence of the witness that some ''maar-peet has happened could not be treated to be a misconduct committed by the petitioner. The petitioner''s counsel submits that it will be the traversity of justice, if punishment is allowed to stand.

24. Learned counsel for the petitioner submits that the allegations of lodging FIR on the directions of the Regional Office cannot be said to be a misconduct, which was proved as charge against the petitioner. Charge No. 1 (b), 1 (c) and 1 (d) were wrongly framed as these were admitted facts of lodging FIR by the petitioner and the customer Shri Alok Pandey, which could not be treated as misconduct. The immediate reporting of the incident to the head office was proved and thus allegation No. 1 (d) was not proved. Allegation 1 (e) related to closing of the account by the customer on account of mis-behaviour/ manhandling, where customer had beaten the bank employee, who had lodged FIR at the instance of the Regional Office closing of the bank account. The fact of closing the account could not be treated as misconduct against the petitioner.

25. Learned counsel for the petitioner submits that as a bank employee the petitioner had a right of overdraft facility. He needed money for payment of the fees for his son, who was pursuing B.Tech. course. The pendency of an earlier charge-sheet against him in the year 1999 on which he suffered minor punishment, could not be a ground to level allegations against him of misconduct, and lastly charge No. 3 was only reiteration of charge 1 (b) namely mis-behaviour and manhandling as misconduct being violative of Regulation 3(1) of the Regulation 76, and which was not proved.

26. Learned counsel for the petitioner further submits that the facts of the incident as it happened were twisted to make out allegations against the petitioner, which were not proved in the enquiry/The reasons given by enquiry officer in proof of the charges, could by no stretch of imagination be treated to have proved the misconduct. The petitioner has been unnecessarily implicated, charged and punished for dismissal, which was reduced to compulsory retirement. It is submitted that there was no allegation or evidence that the petitioner had assaulted or beaten up the customer. Infact the petitioner was apprehended and was beaten up in which he suffered injuries His medical report given by the Chief Medical Officer proved his defence. There were no injuries on the customer Shri Alok Pandey nor he had referred to any injuries in his report to the police, which was deliberately lodged earlier by delaying the report of the petitioner.

27. Shri Manoj Misra appearing for the bank states that the Court should not interfere with the findings of fact recorded by the enquiry officer, after assessment of the evidence. The petitioner was given full opportunity to defend himself. He was given all the documents and the list of witnesses. Shri Alok Pandey, the customer of the bank and Shri R.P. Singh, staff witness has

supported the incident of mis-behaviour by the petitioner in which a customer was assaulted. He submits that the Court has limited powers to interfere in the matters of disciplinary enquiry. In the service industry, such as a bank, the management is concerned with the behaviour of its officers. Where it was proved that the petitioner had misbehaved and manhandled the customer, the bank has to protect itself from such employees, and that a lenient view was taken by the Appellate Authority in reducing to compulsory retirement, the punishment of compulsory retirement was given in spite of the fact that in the previous two incidents the petitioner was punished with minor penalties.

28. We have carefully gone through the enquiry proceedings, the defence of the petitioner and the findings of the enquiry officer. We find that none of the charges were found to be proved against the petitioner. The enquiry officer after giving an opportunity to the petitioner to defend himself arrived at the findings clearly in favour of the petitioner. In the examination-in-chief of the customer Shri Alok Pandey, he had stated that earlier on 28.3.2003 his wife Smt. Archana Pandey had hot talk with the petitioner. She was very sad and had informed him on the talks on the previous night. On 29.3.2003 he had gone to the bank to close the bank account and not to take the matter any further. When he requested Shri Shukla to close the account, he started using bad language and got agitated. He asked him to get up from the chair and to stand outside the counter, whereas earlier Managers used to respect him by offerring him chair. When he protested, the petitioner started using bad language towards him and his family and left his chair. The petitioner, thereafter, got hold of him and engaged into scuffle, which was a very bad incident of his life. The person present in the bank intervened. The petitioner also stated that he will implicate him for looting the bank. He had sufferred some injuries and taking into account the seriousness of the situation got himself medically examined and lodged FIR at the Cantt. police station. In the cross-examination the customer Shri Pandey admitted that he had joined in Padrauna in May/ June, 2001 and could not remember as to when he had got his FDR released and purchased the land. He did not close the other accounts, as he had taken loan to purchase the scooter and that in August, 2003 he went out to visit foreign country. He had no knowledge that there was any overdraft in his account and could not give reason as to why his wife has visited the bank on 28.3.2003. On a question whether asking a customer to stand at the counter is to pay disrespect to the customer, the witness stated that he was always given respect by the Managers by offering him chair, and that when he was asked to stand on the counter, he took it as an insult.

29. On further cross-examination the witness stated that the body language of the petitioner was objectionable and he had no knowledge about the operation of the accounts by his wife. He could not name the staff of the bank, who were present at the time of the incident and stated that he had gone to hospital to get himself medically examined before registering the FIR. He could name Shri R.P. Singh, Shri Sadanand and one or two customers in the bank as it was early in

the morning.

30. Shri R.P. Singh, MW-2, the only witness of the bank, who supported the incident and stated that at about 10.15 or 10.30 a.m. Shri Alok Pandey came to the branch and talked to the petitioner. When he found some unusual noise coming from the side of his table, he turned back and saw that both of them were in scuffle. He came out after closing cash counter and separated them. All this happened within 10 to 15 seconds and thereafter Shri Alok Pandey left the bank saying that he will lodge FIR. The petitioner also left to lodge FIR. The remaining bank witnesses did not say anything against the petitioner.

31. Shri N.K. Pandey, Senior Manager and Shri Sadanand, DW-1 and DW-2 supported the petitioner. Shri Sadanand stated that hot talks were started by the customer Shri Alok Pandey, who started abusing the petitioner and stated that he will put his finger in his mouth and teat it. When the petitioner said that he cannot do so, Shri Alok Pandey, the customer hit the petitioner on his face on which the petitioner fell down. The customer hit him by his foot on which the petitioner again fell down on the table. The table overturned with the impact, on which the table glass was broken. The witness helped the petitioner to stand up, on which the customer Shri Alok Pandey again started hitting him.

32. In the ''reasons of assessment'' given by the enquiry officer after giving entire incident as narrated by the witnesses and in which the petitioner was beaten up by the customer, a conclusion has been drawn that some ''maar-peet happened between the customer and the petitioner and both engaged themselves in fighting each other. Thereafter the enquiry officer observed that the situation could have been avoided. Mr. Shukla (the petitioner) could not control himself and was thus guilty of misconduct in misbehaving and manhandling the customer.

33. In the subsequent narration of the statement of witnesses the enquiry officer clearly found in para 5 that it is not proved that the petitioner caused hurt and injury to the customer and tore his shirt during the course of manhandling, as no medical report of any injury of the customer was produced; on the contrary the petitioner produced his medical report. He further observed that witness of the bank Shri Sadanand stated in his deposition that the customer left the bank abusing and tearing his clothes. The enquiry officer further observed in the reasoning given by him in para 6 of assessment, that it was not proved, that the customer had managed to escape with difficulty. The witnesses deposed that they had separated them after which he left the bank. The enquiry officer in para 7 of his report did not find any good cause in the submission of the presenting officer to disbelieve Shri Sadanand, the staff witness as he was present at the time of incident.

In our opinion the conclusions drawn by the enquiry officer on the assessment of evidence are entirely perverse. Once he found that it was proved that petitioner did not misbehave and manhandled by the customer, and in fact it was the customer, who assaulted the petitioner, on which he was hit on his face and was beaten up with hands and feet, and suffered injuries, the findings that the petitioner was guilty of misconduct as he could have controlled himself, is to hold him guilty of misconduct without any evidence against him.

34. The findings on the allegation of lodging FIR cannot be treated as misconduct against the petitioner The copies of both the FIRs were part of enquiry record. The allegation 1 (d) was not proved. Allegation 1 (e), and 3 are repetitions of allegation of charge 1 (a) and were thus not proved against the petitioner. These allegation''s, by itself, could not be treated to be misconduct as in our opinion the main allegations in charge 1 (e) were not proved. With regard to allegation No. 2 that the petitioner requested for overdraft and gave a false information to the higher officers inspite of fact that the disciplinary enquiry was pending against him vide charge-sheet dated 20.12.1999, could be matter of indiscretion by the petitioner but could not be treated as misconduct. If he was entitled to overdraft facility as bank employee, he had a right to claim it. The endorsement of his complaint to higher offer could not be treated as a misconduct to dismiss him. The enquiry officer and the disciplinary authority have not relied upon any such rule or circulars of the bank in which officer of the bank is not allowed to send representation to the higher officers. There is no finding recorded by Enquiry Officer that the representation was not happily worded or was by way of a complaint against his immediate superior officer. By our judgments delivered today, we have set aside the orders of punishment dated 29.11.2002 and order of Appellate Authority dated 14.8.2003 on charge-sheet dated 29.12.2000 (in Writ Petition No. 42703 of 2003); and the punishment order dated 14.10.2003, and the order of Appellate Authority dated 17.1.2004, on charge-sheet dated 20.12.1999 (in Writ Petition No. 15782 of 2004).

35. Ordinarily High Court does not interfere with the findings of fact recorded by the disciplinary enquiry but where the findings have been arrived at contrary to the evidence and the assessment made by the enquiry officer himself, the Court must, in the interest of justice, interfere in the matter.

36. We reiterate our findings that there was no evidence to show that the petitioner had indulged in mis-behaviour or by man-handling Shri Alok Pandey, the customer of the bank. The account of Shri Alok Pandey was irregular and that some debit entries were made by the petitioner for the cheques, which were dishonored. It was clearly brought about in the evidence, supported by the evidence of the staff witnesses, who had seen the incident, and had helped the petitioner to get up after he had fallen down, after receiving beating from the customer, that hot talks were started by Shri Alok Pandey, the customer. It was the customer, who started beating the petitioner, hitting him on his face and then by his feet, when he had fallen down. In the process the table overturned and the table glass broke down. It was also brought out in the evidence that the petitioner had immediately reported the incident to the Regional Office and on the instructions received from the Regional Office he alongwith the Senior

Manager had visited the police station to lodge FIR, where they were joined by an officer from Regional Office of the Bank. The petitioner''s First Information Report were deliberately delayed by the Circle Officer of the Police Station, to allow the customer to register his report. The customer could not produce any medical report to show that he has suffered any injuries, or that he had difficulty in leaving the bank. The entire incident clearly demonstrated that on account of dissatisfaction on certain transactions, which Shri Alok Pandey, the customer could not explain, he had come on that day early in the morning to the bank, indulged in hot talks with the petitioner and started beating him up, when he was asked to stand behind the counter. He did not leave the petitioner, even when he fell down, continued beating him with his foot, and after having injured him left the bank abusing and tearing his clothes. He managed to lodge his report earlier to the petitioner. The entire evidence as well as findings recorded by the Enquiry Officer clearly shows that an unruly customer with an intention to settle scores, for having made proper entries in the bank accounts, gave a thorough beating to the petitioner serving as the Bank Manager and thereafter succeeded in lodging report with police before the petitioner''s report was registered and managed to initiate enquiry in which the petitioner has been punished.

37. In our opinion the findings are perverse and thus we can interfere in the matter. In Parry''s (Calcutta) Employee''s Union Vs. Parry and Co. Ltd. and Others, , the Court observed that ''perverse finding'' means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In M/s. Triveni Rubber and Plastics Vs. Collector of Central Excise, Cochin, , the Supreme Court observed that the Court can interfere, where the findings are based on no evidence or that they are so perverse that no reasonable person would have arrived at such findings. In M.S. Narayanagouda v. Girijamma, AIR 1977 Cant 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order. A ''perverse verdict'' may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Arulvelu and Another Vs. State represented by the Public Prosecutor and Another, , the Supreme Court relied upon Godfrey v. Godfrey, 106 NW 814, in which the Court defined ''perverse'' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper or correct. The Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and Others, , observed while dealing with the scope of Articles 32 and 226 of the Constitution as follows:

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person

would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.

38. We express our concern on the conduct of the senior officers of the bank. Instead of defending, they have, on the pretext of maintaining public relations, punished their own employee, who had suffered humiliation and injuries for no fault on his part, at the hands of customer.

39. The writ petition is allowed. The order dated 16.7.2005 passed by the respondent No. 3 and the order dated 6.10.2005 compulsorily retiring the petitioner and lowering him of three stages from pay are set a side. The petitioner will be reinstated in service with all consequential benefits except full back wages. Since the petitioner has not served in the bank, he will be paid only 50 % of the wages as back wages for the period he was out of employment. The seniority and other monitory benefits will be restored to him.