(2006) 12 CHH CK 0030

In the Chhattisgarh High Court

Case No : Writ Petition No. 3692 of 2000

Rajendra Shankar Shukla APPELLANT

Vs

The U.C.O. Bank and Others RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Citation : (2006) 12 CHH CK 0030

Hon'ble Judges : Bilaspur Satish K. Agnihotri, J

Bench : Division Bench

Advocate : K.R. Nair, for the Appellant; U.N. Awasthy with Miss Raksha Awasthy, for the Respondent

Judgement

Satish K. Agnihotri, J.—In the present petition filed under Article 226 of the Constitution of India the Petitioner challenges the validity of the order dated 30.6.1999 (Annexure P/21) passed by the Assistant General Manager (Disciplinary Authority).

2. The indisputable facts in nutshell are that the Petitioner was working as Manager in the UCO Bank and was posted at the Indira Gandhi Krishi Vishwavidyalaya (IGKVV) extension counter, Raipur: One cheque for a sum of Rs. 3,00,000/- from the personal and private savings accounts, jointly held by the Petitioner and his wife, was issued on 25.1.1991 in faouvr of Shri V.K. Shukla, the brother of the Petitioner. On 6.3.1991 a stop payment instruction was issued and the same was delivered through the son of the Petitioner at main branch of the Bank at Raipur. Shri V.K. Shukla presented the said cheque on 2.4.1991 at the Raipur Branch and the officers/officials working at Raipur branch immediately made credit entry in the pass-book of Shri V.K. Shukla and sent the said cheque to the extension counter for offering the credit to the Raipur Branch on the same day, without verifying as to whether there was sufficient balance in the account and/or whether there was any stop payment instruction by the Petitioner. The cheque was dishonoured on account of the stop payment instructions. Shri V.K. Shukla on the basis of entries made in his pass-book issued a cheque for a sum

of Rs. 1,00,000/- in favour of his wife on 25.1.1999. The said cheque was also dishonoured on account of the fact that no adequate amount was available in the account of Shri V.K. Shukla.

3. Shri V.K. Shukla, being aggrieved, filed a civil suit against the bank for not honouring the cheque issued by him in favour of his wife. On receipt of a legal notice issued by Shri V.K. Shukla, the Senior Manager Shri Chattopadhyaya was directed to conduct preliminary enquiry by order dated 21.5.1991 (Annexure P/5). In the meantime the Petitioner was promoted to the next higher grade by order dated 19.7.1994 (Annexure P/6) w.e.f. 4.6.1993. The Petitioner was further permitted to cross the efficiency bar by order dated 12.8.1996 (Annexure P/7) w.e.f. 1.6.1996.

4. After a period of 71/2 years the Respondent - Bank issued a charge sheet dated 20.5.1998 to the Petitioner containing the following charges:

(I) Shri R.S. Shukla issued/got issued a cheque on his joint account without making any arrangement of adequate balance and intention to honour it, only to cause wrongful benefit to his relative at the cost of the Bank. He has thus failed to discharge his duties with utmost integrity and honesty, which is violative of Regulation 3 of UCO Bank Officer Employees'' (Conduct) Regulations, 1976 as amended.

(II) Shri Shukla, by making available the official correspondence (exchanged between Regional Office, Raipur and his branch) to his son which he later quoted in his proposal for compromise of Transport Loan availed by him, has not only acted against the interest of the Bank but also has deliberately divulged information of a confidential nature to a person - his son, not entitled to it, which is violative of Regulation 4 of UCO Bank Officer Employees'' (Conduct) Regulations, 1976 as amended.

(III) By availing loans and that also frequently, far in excess of the permissible amount against NS Cs and FD Rs without paying interest at the applicable rates, Shri R.S. Shukla has failed to discharge his duties with devotion, honesty and utmost integrity. This act is violative of Regulation 3 of UCO Bank Officer Employees'' (Conduct) Regulations, 1976 as amended.

5. The Petitioner submitted his reply dated 22.6.1998 denying all the allegations/ charges.

6. In the course of the enquiry, the Petitioner received a letter dated January 28,1999 (Annexure P/18) wherein it was stated that on attaining the age of superannuation on 31.9.1999 the disciplinary proceedings initiated against him will continue, as if the Petitioner was in service until the proceedings are completed and final order is passed in that respect. The Petitioner would not receive any pay or allowance after the date of superannuation. The Petitioner retired from service on 31.9.1999 on attaining the age of superannuation.

7. The Enquiry officer submitted his report dated 7.5.1999 (Annexure P/16)

recording the following findings as under:

Charge No. (I):

Shri R. S. Shukla has failed to discharge his duties with utmost integrity and honesty, which is violative of Regulation 3 of UCO Bank Office Employees'' (Conduct) Regulations, 1976, as amended. Hence, I hold the Charge No. 1 as proved. Charge No. (II):

Shri R. S. Shukla has not acted against the interest of the Bank, and has not divulged information of a confidential nature to his son, not entitled to it -

I, therefore hold the Charge No. 2 as not proved. Charge No. (III):

Shri R. S. Shukla has failed to discharge his duties with devotion, honesty and utmost integrity which is violative of Regulation 3 of UCO Bank Officer''s Employees'' (Conduct) Regulation, 1976 as amended -

Hence, the Charge No. 3 stands proved.

8. The disciplinary authority agreeing with the findings in respect of the charge No. 1 and 3 and disagreeing with the findings in respect of charge No. 2, imposed punishment of dismissal from the Bank''s service in respect of charge No. 1, reduction of basic pay by two stages in respect of charge No. 2 and Censure in respect of charge No. 3 by the impugned order dated 30.6.1999 (Annexure P/21). The Petitioner preferred an appeal before the appellate authority and the same was dismissed.

9. The Petitioner has filed this petition challenging the validity of the impugned order on the following grounds: Firstly, the charge No. 1 does not come within the definition of misconduct as defined under Regulation 24 of the UCO Bank Officers Employees (Conduct) Regulations, 1976 (for short ''the Conduct Regulations, 1976''). Regulation 24 clearly provides that a breach of any of the provisions of these Regulations shall be deemed to be misconduct. No regulation deals with issue of a cheque from the officer''s private and personal accounts. Secondly, the act of the Petitioner to issue a cheque in favour of his brother Shri v. K. Shukla and thereafter issuing stop payment instruction, had not caused any loss to the Bank and this conduct also does not come within the purview of the official duties of the Petitioner. Thirdly, unexplained delay of 71/2 years before initiation of the departmental enquiry when the Petitioner has admittedly been promoted to a higher post and was allowed to cross the Efficiency Bar, the Respondent Bank cannot issue a charge sheet after unexplained delay of seven years; Fourthly, the Bank officer is not responsible for dishonour of cheque as the same has to be dealt with under some other provisions of law i.e. under the provisions of the Negotiable Instruments Act, 1881.

10. Learned Counsel for the Petitioner submitted that the charge No. 2, which was found not proved by the disciplinary authority, cannot be made the basis for imposing punishment without issue of a notice to the delinquent employee i.e.

the Petitioner and without recording the reasons for not disagreeing with the enquiry officer, the punishment of dismissal cannot be imposed on the Petitioner after his retirement, as the relationship of the employer and employee has come to an end on the retirement of the Petitioner from service and the service was extended only for the purpose of concluding the departmental enquiry initiated against him during his service. The Petitioner becomes a pensioner, not an employee, and does not continue to be an employee of the bank.

11. The impugned order is bad on account of the fact that there cannot be amalgam of the major and minor penalties in a single order in view of the decision of the Supreme Court in Union of India (UOI) and Another Vs. S.C. Parashar, .

12. Learned Counsel for the Petitioner would further submit that if the cheque issued by any party, presented in any Bank is dishonoured for any reason, whatsoever that may be insufficiency of fund or stop payment instructions, the Bank is only required to return the cheque showing the reason to the person who has presented it for payment and the aggrieved person may take action against the person who had issued such cheque. The alleged transaction was absolutely between the family members and it cannot be said from any angle that the Petitioner has conducted himself in such a way which has caused loss to the Bank or that amount to ''misconduct'' within the purview of any of the regulations of the UCO Bank officer employees'' (Conduct) Regulations.

13. It was further submitted that if the Petitioner had issued a cheque to his brother for buying a house without keeping adequate balance in his savings bank account, that cannot be treated as wrongful gain at the cost of the Bank and the Petitioner has not at all attempted to cheat a third party. There was no admission in the letter dated 10.8.1996 that the cheque was issued by the Petitioner in connivance with his brother. In fact the cheque was issued by the wife of the Petitioner in favour of Shri v. K. Shukla, knowing the fact of issue of cheque, the son of the Petitioner issued stop payment instructions to the Bank. The bank itself admitted in the written statement dated 9.1.1993 before the Civil Court that the relationship between the two brothers were not cordial. Shri Marwaha (R W. 1) also stated that the relations between the Petitioner and his brother Shri v. K. Shukla were not good, thefefore there was no occasion for the Petitioner to issue a cheque in connivance with his brother. Shri Marwaha (P. W. 1) himself admitted before the inquiry officer that the Petitioner''s son Shri Rohit Shukla delivered the stop payment instructions and Shri Marwaha received it. At that time the Petitioner was not present. This statement has not been controverted by the Bank. Since the cheque was dishonoured on 2.4.1991 as per the stop payment instructions, there is no bearing of the allegation that neither the Petitioner made any stop payment caution over the respective pages of his A/c''s folios (S. B. Account No. 11061) nor he informed the parent branch at Raipur to mark any caution in his brother''s savings bank account. The Respondent Bank has not shown any rule either before the enquiry officer or before this Court

which prescribes that when stop payment instructions are issued, the main branch should be intimated to mark caution in the account of the payee. With regard to the malafide intention of the Petitioner that he was fully aware of the procedure being followed at branch which was allowing immediate credits, it was submitted that Shri Marwaha (P.W. 1) has stated that there was no procedure of giving immediate credit on presentation of cheque and the Bank''s rules prescribe that the drawer''s account must be debited before giving credit while clearing any cheque. Therefore, the finding of the inquiry officer is against the rules of the Bank. With regard to the allegation that the bank has been dragged into unwarranted litigation, learned Counsel for the Petitioner would submit that the civil suit filed by Shri V.K. Shukla was not on account of issue of cheque by the Petitioner, but it was on account of the fact that the immediate credit was given in the savings bank account of Shri V. K. Shukla by the officers/employees posted at Raipur branch as well as not returning the dishonoured cheque to Shri v. K. Shukla in time.

14. Learned Counsel for the Petitioner would next submit that the inquiry was not just and proper and the finding of the inquiry officer and disciplinary authority were perverse because the Petitioner had requested for production of the cheque in question to prove that he did not issue the same but his wife had issued it but the same was not produced before the inquiry officer. The Petitioner had also requested for production of legal notice issued on behalf of Shri v. K. Shukla as well as the enquiry report submitted by Shri A.B. Chhattopadhyaya, Senior Manager, Raipur, wherein it was found that proper procedure was not followed by the Raipur branch but none of the above documents were produced by the Respondent-Bank. The Petitioner has also requested for production of the domestic cheque register of Raipur branch dt. 2.4.91 to prove as to when the cheque was received from Shri V. K. Shukla, the dispatch cheque register of Raipur branch dated 29.4.1991 as to when the dishonoured cheque was returned to Shri V. K. Shukla with memo, but none of the above documents were presented before the inquiry officer nor copy were supplied to the Petitioner.

15. Shri U. N. Awasthy, learned Senior Advocate with Miss Raksha Awasthy, learned Advocate, appearing for the Respondents, per contra would submit that the services of the Petitioner on account of his retirement on attaining the age of superannuation would not come to an end, as by order dated 28.1.1999 the services of the Petitioner continued till completion of the enquiry under the provisions of Rule 20 (3) (iii) of the UCO Bank Officers'' Service Regulations, 1979. The question of production of such original cheque in the enquiry does not arise as the same has been returned back to Shri V. K. Shukla, the drawer. The misconduct committed by the Petitioner cannot be condoned on account of the fact that the Petitioner was promoted and thereafter was permitted to cross the efficiency bar as no charge-sheet was issued or enquiry was pending during that period.

16. It was further submitted by learned senior counsel, appearing for the

Respondents, that it is true that the Petitioner was not given a notice while disagreeing with the findings of the enquiring authority in respect of charge No. 2. There is no provision for issue of such a notice before disagreeing with the findings of the enquiring authority. The disciplinary authority is competent enough to disagree with the charges unproved and to pass the appropriate order of punishment. The Petitioner has preferred an appeal which was dismissed, thus, the Petitioner had sufficient opportunity to defend his case and at this stage the Petitioner cannot impugn the order on the ground that necessary documents were not produced and a copy of the same was not supplied to the Petitioner in the enquiry. Learned Counsel supported the penalty of dismissal. However, in respect of punishment with regard to the charges No. 2 and 3, learned Counsel categorically conceded that the imposition of penalties in respect of charge No. 2 and charge No. 3 would not have any impact on the Petitioner, as the Petitioner stands retired from service.

17. I have heard learned Counsel for the parties and perused the pleadings, documents appended thereto.

18. In the facts of the case on hand, the first point for consideration is as to whether the issue of a cheque from the personal and private account of an employee of the Bank amounts to misconduct and is violative of Regulation 3 of the Conduct Regulations 1976 ? It is undisputed that a cheque for a sum of Rs. 3,00,000/- was issued from the joint personal & private savings bank account No. 11061, held by the Petitioner and his wife on 25.1.1991 in favour* of brother of the Petitioner Shri V.K. Shukla. Stop payment instructions were issued on 6.3.1991 which was delivered by the Petitioner''s son at the main branch of the Bank at Raipur where Shri V. K. Shukla was having his account. The said cheque was presented on 2.4.1991 after a period of about 25 days by Shri V. K. Shukla at the Raipur branch and the officers working at Raipur branch without verifying the account and the stop payment instructions made credit entry in the pass book of Shri V. K. Shukla. However, no payment against the same could be made and the entry in the pass book was amended later on. It appears that the Petitioner has not conducted himself in such a way as to invite charge of misconduct. Misconduct of Bank employee which is punishable under Regulation 24 of the Conduct Regulations, 1976, reads as under: -

24. A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the UCO Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976.

19. The relevant provisions of the Conduct Regulations, 1976 are Regulations 3,4,5,6 and 19, which reads as under:

3. (1) Every officer employee shall at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

(4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.

4. Every officer employee shall maintain the strictest secrecy regarding the bank''s affairs and the affairs of its constituents and shall not divulge directly or indirectly any information of a confidential nature either to a member of the public or to an outside agency or to any other employee of the bank not entitled to such information unless-

(i) divulging of such information is in accordance with the law or in accordance with the practices and usages customary amongst banks;

(ii) he is compelled to divulge such information by judicial or other authority;

(iii) instructed to do so by a superior officer in the discharge of his duties."

5(1) No officer employee shall use his position or influence directly or indirectly to secure employment for any person related, whether by blood or marriage to the employee or to the employee''s wife or husband, whether such a person is dependent on the employee or not.

(2) No officer employee shall, except with the prior permission of the competent authority permit his son, daughter, or any other member of his family to accept employment in any private undertaking with which he has official dealings or in any other undertaking having to his knowledge official dealings with the bank: Provided that where the acceptance of the employment cannot await prior permission of the Competent Authority or is otherwise considered urgent the matter shall be reported to the Competent Authority Within three months from the date of the receipt of the offer of employment; and the employment may be accepted provisionally subject to the permission of the Competent Authority. No officer employee shall, in the discharge of his official duties, knowingly grant or authorize the grant of any advance or banking facilities to or enter into or authorize entering into by or on behalf of the bank any contract, agreement, arrangement or proposal in any matter or given or sanction any contract or loan to any undertaking or person if any member of his family is employed in that undertaking or under that person or if he or any members of his family is employed in that undertaking or under that person(sic) if he or any member of his family has interests in such matters or contracts in any other manner and the officer employee shall refer every such matter or contract or loan to his superior officer and the matter or contract or loan shall thereafter be disposed or according to the instructions of the authority to whom such reference is made.

Explanation: A person is not deemed to have any interest in an undertaking for the purpose of this sub-regulation, if he is only a shareholder having not more than 2 per cent of the paid up capital of the undertaking in his name.

6(1) No officer employee shall, except with the previous sanction of the bank, engage directly or indirectly in any trade or business or undertake any other employment:

Provided that an officer employee may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic, scientific, professional, cultural, educational, religious or social character, subject to the condition that his official duties do not thereby suffer, but he shall not undertake, or shall discontinue such work if so directed by the competent authority.

Explanation: Canvassing by an officer employee in support of the business of insurance agency or commission agency, owned or managed by a member of his family shall be deemed to be a breach of this sub-regulation.

(2) Every officer employee shall report to the bank if any member of his family is engaged in trade or business or owns or manages an insurance agency or commission agency.

(3) No officer employee shall, without the previous sanction of the bank, except in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force or any co-operative society for commercial purposes:

Provided that an office employee may take part in registration promotion or management of a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860) or any corresponding law in force.

(4) No officer employee shall accept any fee for any work done by him for any public body or any private person without the sanction of the Competent Authority.

(5) No officer employee shall act as an agent of, or canvass business in favour of an Insurance Company or Corporations in his individual capacity.

19. An officer employee shall so manage his private affairs as to avoid habitual indebtedness or insolvency. An officer employee against whom any legal proceedings are instituted for the recovery of any debt due from him or for adjudging him as an insolvent shall forthwith report the full facts of the legal proceedings to the bank.

20. Reading all the provisions of the Conduct Regulations, 1976, violation of which constitute a misconduct punishable under the UCO Bank Officer

Employees'' (Discipline and Appeal) Regulations, 1976, there is no regulation which provides that a bank employee cannot have a private/personal account solely or jointly or cannot issue a cheque in favour of a third party. In case of dishonour of cheque, the Bank is not liable at all if a cheque is presented and the same is dishonoured for any reason whatsoever, may be insufficiency of fund or stop payment instructions, the liability of the Bank is only to return the cheque to the drawer and if there is any dispute between the parties the same can be dealt with under the provisions of the Negotiable Instruments Act, 1881 and not under any Banking Regulations.

21. Rule 24 of the UCO Bank Officer Employees'' (Discipline and Appeal)

Regulations, 1976 makes clear distinction about what would constitute a misconduct. Failure to keep such high standard of moral, ethical or decorous behaviour befitting an officer of the Bank by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct amounting to violation of any of provisions of the Conduct Regulations, 1976. In view of that, even if the charge No. 1, as alleged, is accepted as fully proved that would not constitute misconduct as prescribed under Regulation 24 of the Conduct Regulations.

22. Learned Counsel for the Respondent has relied on a decision of the Supreme Court in Ganesh Santa Ram Sirur Vs. State Bank of India and Another, , to support his contention that acting beyond one''s authority is by itself a breach of discipline and trust and is a misconduct. The Supreme Court in the said decision has made it clear that the Bank Manager/Officer and employee of any bank nationalized or non-nationalized are expected to act and discharge their functions in accordance with the Rules and Regulations of the Bank. In the facts of that case there was a prohibition for the Bank Manager to sanction loan to the wife or relative or to any partner and there was a clear breach of the Rules. In the present case, as stated hereinabove, there was no violation of any Rules/ Regulations, enumerated under the provisions of the Conduct Regulations 1976 which would constitute misconduct. Thus, the Respondents cannot get any benefit from the dictum laid down by the Supreme Court in the case of Ganesh Santa Ram Sirur (supra).

23. Thus the charge No. 1 with allegations of fact does not constitute a misconduct under the provisions of the Conduct Regulations, 1976.

24. With regard to the delay in issue of the charge sheet after a period of 71/2 years, when the Petitioner was promoted and was permitted to cross the efficiency bar, within the time alleged misconduct was committed and before issue of the charge sheet, is concerned, the Respondent has not offered any satisfactory explanation. The question of delay was raised before the disciplinary authority as well as before the appellate authority and the same was completely ignored by the authorities. Admittedly, the alleged misconduct was committed on 25.1.1991 and thereafter it was concluded on 2.4.1991 when the said cheque

was presented for encashment and the charge sheet was issued on 20.5.1998.

25. Learned Counsel for the Petitioner has relied on a decision of the Karnataka High Court in the matter of N. Krishna Murthy v. Syndicate Bank, Manipal and Ors. (1999 Lab. I.C. 3729). There was a delay of about seven years, the High Court held that on the ground of enormous delay alone the order of dismissal is liable to be quashed. I am in respectful agreement with the view of the Karnataka High Court. In the present case there was not mere unexplained delay but the Petitioner was promoted and was permitted to cross the efficiency bar during that period which amounts to even waiver or condonation of the alleged misconduct, if any.

26. With regard to the amalgam of the major and minor penalties together Rule 4 of the UCO Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976 provides for minor penalties and major penalties separately. The Supreme Court in Union of India and Anr. v. S.C. Parashar {(2006) 3 SCS 167}, laid down the dictum that "the disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing the both minor and major penalty by the same order. Such a course of action could not have been taken in law." In the present case the disciplinary authority has imposed a penalty of dismissal i.e. major penalty and minor penalties of reduction of basic pay by two stages and Censure to the Petitioner who retired on superannuation on 31.9.1999 i.e. much before the imposition of penalty.

27. The next issue is as to whether an employee can be dismissed from service after retirement.

28. Regulation 20 (3) (iii) of the Bank Officers'' Service Regulations, 1979 provides that service of the employee would continue only for the purpose of the disciplinary proceedings, not for any other purpose, which reads as under -

20. Termination of Service: 20(1) xxx xxx xxx

20(2) xxx xxx xxx

20(3)(i) xxx xxx xxx

20(3) (ii) xxx xxx xxx

20(3)(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPE.

29. Regulatios 3 (k.) of the UCO Bank officer Employees'' (Discipline and Appeal) Regulations. 1976 defines ''officer employee'' that ''officer employees'' means a

person who holds a supervisory, administrative or managerial post in the bank or any other person who has been appointed and is functioning as an officer of the bank, by whatever designations called. The Regulation 3 (k) reads as under:

3. Definitions:

(k) officer employee'' means a person who holds a supervisory, administrative or managerial post in the bank or any other person who has been appointed and is functioning as an officer of the bank by whatever designations called, and includes a person whose services are temporarily placed at the disposal of the Central Government or a State Government or any other Government undertaking or any other public sector bank or the Reserve Bank of India or any other organization, but shall not include casual, work charged or contingent staff or the award staff.

30. As per Regulation 2 (n) of the UCO Bank (Employees'') Pension Regulations, 1995, ''employee'' means any person employed in the service of the Bank on full time work on permanent basis or on part-time work on permanent basis on scale wages and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages.

31. Reading of the provisions, as stated (supra), it is clear that an "employee" means, a person who is actually working with the establishment of the bank and is receiving pay and allowances for the work. In the present case, admittedly, the Petitioner retired on 31.1.1999 thereafter he became pensioner and did not remain an employee of the Respondent/bank. Thus, it is well settled that the order of dismissal cannot be passed against a person/ employee who is no longer in service and has retired on superannuation.

32. Accordingly, the enquiry against the Petitioner can be proceeded with, under the provisions of the UCO Bank (Employees'') Pension Regulations, 1995, not under the provisions of the UCO Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976.

33. The Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, observed in para 17, as under:

17.......... The High Court was, therefore, right in coming to the

conclusion that the Respondent was no longer in service on the date on which an order removing him from service was made and, therefore, the order was illegal and void.

34. The Supreme Court in the case of High Court of High Court of Punjab and Haryana Vs. Amrik Singh, observed in para 5, as under:

5. It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer''s finding that the Respondent committed embezzlement and mentioned

that the order of dismissal would come into immediate effect from the date of the order. In other words, he appears to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years'' period of extended service of reemployment with effect from 31.8.1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date. However, it would be clear that he has the power either under Rule 2.2 of the Punjab and Haryana Civil Services Manual, Vol. II or Rule 9 of the Central Civil Services Pension Rules to take appropriate action as was made applicable to the staff of the High Court of Punjab and Haryana as the case may be. Therefore, it would be open to him to take such action as is open to him under law. The impugned order of the High Court is set aside, and the writs are issued with the above modification. The appeals are allowed. No costs.

35. With regard to the charge No. 2 and 3, the charge No. 2 was found unproved by the enquiring officer and the disciplinary authority without affording an opportunity of hearing to the Petitioner passed the order of minor penalty on the Petitioner. The same deserves to be quashed on the simple ground that the Petitioner was not afforded an opportunity of hearing before taking a different view then that of the enquiring authority. The Supreme Court in the matter of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , while dealing with the question of opportunity in case of disciplinary authority disagrees with the enquiry authority, in para 19 observed as under:

19........... As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

36. In view of the categorical submission made by learned Counsel for the Respondent/Bank that the imposition of''Censure'' as penalty, in respect of the charge No. 3, would not have any impact on the Petitioner, as the Petitioner had already retired from service. It is not necessary to go into it, on merit.

37. Looking from all angles and in view of the discussions made hereinabove, the impugned order dated 30.6.1999 (Annexure P/21), imposing penalties are quashed and the petition is allowed. The Petitioner is entitled to all benefits

flowing from the quashing of the impugned order dated 30.6.1999. No order as to costs.