
(2003) 11 RAJ CK 0013
In the Rajasthan High Court
Case No : Writ Petition No. 2332 of 1996

Satya Narain Gupta

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 4, 7(2), 7(3)

Citation : (2004) 2 LLJ 858

Hon'ble Judges : K.S. Rathor, J

Bench : Single Bench

Advocate : Sunil Samadaria, for the Appellant; G.K. Garg, for the Respondent

Judgement

K.S. Rathor, J.—The petitioner preferred this writ petition seeking writ, order or direction in the nature of writ of certiorari quashing and setting aside Charge-sheet dated March 3, 1988, order of punishment dated November 14, 1994 and order dated February 3, 1996 of the Appellate Authority.

2. The petitioner at the relevant point of time was working as Branch Manager in the respondent bank. A charge sheet dated March 3, 1988 was issued and an enquiry was initiated against the petitioner under Regulation 6 of the UCO Bank Officer Employees" (Disciplinary and Appeal) Regulations 1976. A memorandum of charge sheet was also served upon the petitioner. The petitioner submitted his detailed statement of defence. The disciplinary authority vide its order dated January 12, 1989 appointed Shri K.L. Sharma as Enquiry Officer to conduct the departmental enquiry.

3. The Enquiry Officer conducted the departmental enquiry and submitted his findings on April 28, 1994. After receipt of the enquiry report from the Enquiry Officer disciplinary authority issued a show cause notice to the petitioner along with the report of the enquiry vide letter dated May 10, 1994.

4. The petitioner submitted his representation on June 15, 1994 to the

disciplinary authority in reply to the show cause notice dated May 10, 1994.

5. After about four months the petitioner received a letter dated September 12, 1994 by which the petitioner was covered note of disagreement on Charges No. 1, 3 & 4 requiring him to make his submissions within 7 days of receipt of the said letter, if he so wished.

6. The petitioner submitted his reply to the letter dated September 12, 1994.

7. The disciplinary authority by its order dated November 11, 1994 imposed 8 penalties upon the petitioner which are as follows:

Charge No. 1:- Proved -Reduction of basic pay of Shri Gupta to the lowest basic pay in the time scale (Junior Management Grade Scale-I) applicable to him.

Charge No. 2:- Proved - Censure Charge No. 3:- Proved - Censure

Charge No. 4:- Proved - Recovery of Rs. 75000/- from pay and allowances or terminal benefit of Shri Gupta or such other amount as may be due to him.

Charge No. 5:- Proved - Withholding of promotion for a period of five years from the date of this order.

Charge No. 7:- Proved - Censure

Charge No. 8: - Proved - Reduction of Basic Pay of Shri Gupta to the lowest basic pay in the time scale of (Junior Management Grade Scale-I) applicable to him.

8. The above penalties are to run concurrently.

9. The petitioner preferred an appeal against the order dated November 11, 1994 under Regulation 17, to the General Manager of the Bank at Calcutta. The appellate authority also found charges proved against the petitioner. The appellate authority while considering the appeal has taken a lenient view as regards recovery of Rs. 75,000/- from the petitioner, imposed as penalty by Disciplinary Authority against Charge No. 4 held as proved. Considering the punishment awarded by the Disciplinary Authority in respect of other charges, in exercise of the powers conferred under Regulation 17 of the UCO Bank Officer Employees (Discipline & Appeal) Regulations, 1976 confirmed the punishment imposed by the Disciplinary Authority in respect of Charges No. 1, 2, 3, 5, 7 & 8 held as proved and amend the order of the Disciplinary Authority in respect of Charge No. 4 held as proved and penalty of reduction of basic pay of the petitioner to the lowest basic pay in the time scale (Junior Management Grade Scale-I) applicable to him.

10. The petitioner by way of this petition assailed the legality and propriety of the departmental proceedings which culminated in passing the order of seven penalties against the petitioner vide punishment order dated November 11, 1994 on the ground that,

(1) Departmental Proceedings have been conducted in utter disregard of

Regulation 7(2) of UCO Bank Officer Employees" (Discipline & Appeal) Regulations, 1976 making the proceedings invalid and non est in eye of law.

(2) Seven penalties inflicted by punishment order dated November 11, 1994 and by and large maintained by Appellate Authority are ultra vires the provision of Regulation 7(3) of UCO Bank Officer Employees" (Discipline & Appeal) Regulations, 1976 and are therefore illegal and invalid in eye of law.

(3) Punishment of Reduction of basic pay of Shri Gupta to lowest basic pay in the time scale (Junior Management Grade Scale-I in relation to Charge Nos. 1, 4 & 8 imposed by punishment order dated November 11, 1994 order and appellate order dated February 3, 1996 is not even provided by law, therefore, could not have been imposed on the principle that punishment not provided by law cannot be imposed upon delinquent. Thus, aforesaid punishment of reduction of basic pay to the lowest basic pay in scale-1 is ultra vires to Regulation 4(e) of UCO Bank Officer Employees" ((Discipline & Appeal) Rules, 1976.

11. Learned counsel for the petitioner has drawn my attention towards Regulation 7(2) of Regulations of 1976, which is reproduced as under:

"The Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

12. In support of his submission he also referred the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and relevant para 19 wherein the Hon"ble Supreme Court has interpreted the Regulation 7(2) of the Regulations 1976. He also referred the. Regulation 7(3) of the UCO Bank Officer Employees" Regulations, 1976. As per Regulation 7(3) the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall notwithstanding anything contained in Regulation 8 make an order imposing such penalty.

13. By referring the Regulation 7(3) learned counsel for the petitioner demonstrated before me that words which are used in Regulation 7(3) penalties and penalty, any of the penalties specified in Regulation 4 should be imposed on the officer employee whereas in the concluding part of the Regulation 7(3) anything contained in Regulation 8 make an order imposing such penalty and submits that under this regulation composite penalties cannot be passed and only penalty can be imposed as evident by bare perusal of Regulation 7(3).

14. Mr. Sunil Samdaria further submits that punishment of reduction to lowest basic pay in the time scale (Junior Management Grade-I) in relation to charge Nos. 1, 4 & 8 imposed by punishment order dated November 11, 1994 order and appellate order dated February 3, 1996 is not even provided by law, therefore, could not have been imposed on the principle that punishment not provided by

law cannot be imposed upon delinquent as it is ultra vires to Regulation 4(e) of the Regulations 1976.

15. So far as the reduction to a lower grade or part or to a lower stage in a time scale is concerned, learned counsel for the petitioner, Mr. Sunil Samdaria submits that imposition of such punishment is not even provided by law. Provided is only reduction of lowering down one stage in a time scale. The action, which has been taken by the disciplinary authority is also contrary to the Regulation 4(e) of the Regulations 1976.

16. He also referred pleading part of the respondents in the averment made in ground 24(1). As the respondent has only expressed that the contents of ground 1 are not admitted in the manner stated meaning thereby contents of ground 24(1) stand unrebutted by the respondents.

17. He also referred the stages of lowering the pay scale to Rs. 4390 to 4260. Various stages of pay in time Scale - I & II are reproduced here- in- below:

Scale I - 2100-120/16-4020

Scale II - 3060-120-/10-4360-130-/10

4390+ 2

Stagnation increment of Rs. 130/- each,

18. Even in case of reduction of pay scale, the petitioner at the maximum could have been relegated to the stage of Rs. 4260/- whereas the disciplinary authority has lowered down the whole time scale.

19. The punishment in relation to charge Nos. 1, 2 & 8 could not have been imposed as not provided by law. In support of his contention petitioner placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of State Bank of India and others Vs. T.J. Paul, more particularly paras 18 and 19. He also placed reliance on the judgment reported in Punjab National Bank v. Kunjbihari Mishra (supra).

20. Arguments advanced on behalf of the petitioner have been controverted by learned counsel for the respondents Mr. Garg. At the outset learned counsel for the respondents submits that there is no error of jurisdiction in the punishment order and there is no error apparent on the face of record. He submits that while exercising the power under Article 226 of the Constitution of India, this Court cannot sit as a Court of appeal. In support of his contentions he placed reliance on the following judgments:

(1) State of Maharashtra and another Vs. Madhukar Narayan Mardikar,

(1) SCC 57: 1991-I-LLJ-269

(2) The Associated Cement Co. Ltd. Vs. P.D. Vyas and Others,

(3) AIR 1992 RAJ 500

(4) State of Andhra Pradesh Vs. Sree Rama Rao,

(5) Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh,

21. He also referred Regulation 7(2) to show that this regulation has not been violated by the respondents. The Disciplinary Authority conveyed its note of disagreement to the petitioner differing with the opinion of the enquiry officer holding the charge Nos. 1, 3 and 4 as proved on the basis of observations and reasoning given in enclosure 1 to the note and the Disciplinary Authority gave full opportunity of making submission to the petitioner by way of grant of 7 days time.

22. With relation to the regulation multiple penalties are concerned, learned counsel for the respondents submits that the multiple penalties can be imposed upon the delinquent officer and the imposition of penalties upon the petitioner is within the scope of Regulation 4 as well as 7(3).

The word "Any of the penalties" as mentioned in the regulation cannot be construed as meaning one alone but word "any" should be interpreted as "all". He further submits that Hon"ble Apex Court as well as this Court construed the meaning of "any" as "all".

23. In support of his contention he referred the following judgments:

(1) The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.,

(2) Punnose v. Manager, P & T Motor Service, Cochin 1977 (2) SLR 399 (Ker).

(3) Veerappa Shiddalingappa Virupathi v. State of Mysore AIR 1965 Mys. 227

(4) Arbn. Satyanarain Biswanath Vs. Harakchand Rupchand,

24. Mr. Garg further referred MITRA'S LEGAL DICTIONARY, PREM'S JUDICIAL DICTIONARY, BLACK'S LAW DICTIONARY, OXFORD DICTIONARY. At page 58 of MITRA-S LEGAL DICTIONARY it is mentioned that "any" means "all". At page 162 of PREM-S JUDICIAL DICTIONARY, the word "any" in the context can mean "all". In BLACK'S LAW DICTIONARY meaning of "any" -some, an indefinite number. At page 44 of OXFORD DICTIONARY "any" means one or more.

25. The Hon"ble Apex Court as well as this Court in law various case held that multiple penalties are permissible. The cases upon which the respondents placed reliance are Commissioner of Commissioner of Rural Development and Others Vs. A.S. Jagannathan, and Ponnose"s case (supra).

26. As per Regulation 4(e) reduction to a lower grade or post, or to a lower stage in a time scale can be awarded. Learned counsel for the respondents controverted the submissions made on behalf of the petitioner and he submits that a lower stage in "time scale" provided only "one" stage down in time scale is not correct interpretation. The correct interpretation of the same is "any where in

the time scale". A lower stage may be the lowest being a lower stage. The meaning of "a" should be interpreted as "more than one" also reading the entire context of the regulation."

27. This controversy has been discussed by the Hon"ble Apex Court in the case of Kulwant Singh Gill v. State of Punjab reported in 1990 (4) JT SC 70 "a lower stage in time scale" held withholding of 2 increments valid impliedly adopting same interpretation. The principle laid down by the Hon"ble Apex Court has been followed by this Court in the case reported in 1991 (1) WLC 103.

28. As per dictionary meaning of prefix, "a" means "any or every".

29. Mr. Garg further submits that petitioner was drawing a basic pay of Rs. 4390/- at the time of imposition of penalty though he was in Junior Management Grade Scale-I. The Scale I starts from Rs. 2100 and ends at Rs. 4020. Since the petitioner was drawing Scale II and basic pay salary of the petitioner was Rs. 4390/-, therefore the order of punishment bringing him to the lowest of Scale I was given cutting off the increments of the Scale II which he was drawing at that time.

30. Prior to this present petition, the petitioner preferred writ petition before this Court and vide order dated December 1, 1994 the same was dismissed. As the petitioner has alternative remedy available to him under the relevant rules, the Court observed that it is not a fit case for interference by this Court by exercising the jurisdiction conferred by Articles 226 and 227 of the Constitution. Consequently, the writ petition was dismissed in limine with liberty to file appeal within prescribed period before the appellate authority.

31. Heard rival submissions of the respective parties and gone through the relevant regulations of the bank and the material available on the record.

32. First of all I like to refer relevant provisions of the Conduct and Discipline and Appeal Regulations 1976, of Officer Employees, which are referred by the respective parties.

33. Regulation 7(2) is herewith reproduced as under:

"The Disciplinary Authority shall, if it disagrees with the findings or the inquiring authority on any article of charge, record its reasons for such disagreement findings on such charge, if the evidence on record is sufficient for the purpose."

34. By bare perusal of the Regulation 7(2) the Disciplinary Authority if disagrees with the findings of the inquiring authority on any article of charge have to record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

35. As per Exhibit 7 dated September 12, 1994 the appellate authority has expressed disagreement with the opinion of the enquiry officer in respect of the allegation Nos. 1, 3, and 4, it was given out that on the basis of the records of the enquiry, the appellate authority differed with the opinion of the Enquiry

Officer and held the aforesaid charges as proved on the basis of observations and reasoning given in Annexure-I, which was enclosed along with the said letter dated September 12, 1994. In Annexure 1 the disciplinary authority has given reasons of disagreement regarding allegation Nos. 1, 3 and 4. After giving reason the Disciplinary Authority have observed that they do not agree with the view of the enquiry officer in this regard and held the allegation as proved against the petitioner.

36. I have also gone through the Judgment of Punjab National Bank v. Kunj Bihari Mishra (supra) wherein the Hon"ble Supreme Court has held that the result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). 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 Supreme Court has also held that the authority has to take a final decision and can impose a penalty but after giving an opportunity to officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

37. As in the instant case the disciplinary authority vide its letter dated September 12, 1994 informed the petitioner regarding disagreement to the allegation Nos. 1, 3 and 4 and along with this letter Annexure 1 was also enclosed by the disciplinary authority and same was sent. Prior to imposing penalty on the allegation Nos. 1, 3 and 4 the opportunity as evident by the letter dated September 12, 1994 has been given to the petitioner and the petitioner was asked to make a submission within a period of 7 days from the receipt of the letter dated September 12, 1994. It is not disputed that the petitioner had submitted reply to this letter. The ratio decided in the case of Punjab National Bank v. Kunj Bihari Mishra (supra) is not applicable in the instant case as the opportunity was afforded to the petitioner to represent his case before recording its finding. The petitioner is wrongly interpreting the reasons of disagreement as the finding recorded against the petitioner which is in my considered view is not correct.

38. Regulation 7(3) herewith reproduced as under:

"If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8 make an order imposing such penalty."

39. Upon perusal of Regulation 7(3) it reveals that in the first part of the

regulation 7(3) the word "penalties" has been mentioned whereas in the concluding part word "penalty" has been mentioned meaning thereby out of the penalties the disciplinary authority have to choose among the penalties and award only penalty and as demonstrated by the petitioner that the word "penalty" restricted to impose one penalty and not multiple penalties. As per the order of the disciplinary authority dated November 11, 1994 seven penalties were imposed upon the petitioner. The charges are already reproduced hereinabove.

40. I have perused the judgments referred by respondents on this point reported in Punnose v. Manager, P & T Motor Service, Cochin (supra), Commissioner of Rural Development v. A. S. Jagannathan (supra). In the case of Punnose v. Manager, P&T Motor Service, Cochin the Hon"ble Court has held that double jeopardy Punishment - Imposition of two punishments i.e. one of censure and another for recovery of money for causing damage to vehicle of department - Not illegal. But in this case Regulation 7(3) has not been discussed and other pari materia provisions has also not been considered. The same view has been taken in the judgment of Hon"ble Supreme Court in the case of Commissioner of Rural Development v. A.S. Jagannathan (supra).

41. In view of this fact, I am also not convinced with the arguments advanced on behalf of the petitioner that as per Regulation 7(3) the multiple penalties cannot be passed. The word "any" should be interpreted as "all" as held by Hon"ble Supreme Court and I am fully convinced with the view of Hon"ble Supreme Court and the various High Courts in the following cases:

Chief Inspector of Mines (supra), Punnose (supra), Veerappa Shiddalingappa (supra), Satyanarain Biswanath (supra).

42. In these cases, the word "any" is interpreted as all or more than one. I have also gone through MITRA'S LEGAL DICTIONARY, PREM'S JUDICIAL DICTIONARY, BLACK'S LAW DICTIONARY, OXFORD DICTIONARY where the meaning of word "any" has been considered as "all". The word "any" in the context can mean "all" and "any" one or more.

43. In the case reported in Commissioner of Rural Development (supra) and Punnose (supra) the Supreme Court has held as discussed hereinabove that multiple penalties are permissible under the regulations. The analogy drawn by Hon"ble Supreme Court is applicable to the instant case.

44. Perused the Regulation 4(e) which stipulates reduction. The petitioner has interpreted the provision of Regulation 4(e) and contended that regulation does not permit reduction to more than one stage in the time scale.

Had the intention of the Regulation Making Authority been to reduce the pay to more than one stage, it would not have pre-fixed "a" to lower stage. "A" is an article which connects "One" and not "many". Certainly, it does not connote/postulate "many". So also the "lower" does not tend to mean the "lowest". It is

an accepted principle of the law of interpretation that when a provision is susceptible to two interpretations, one favourable to the employee should be adopted.

45. After considering the submissions made on behalf of the respondents, as per the interpretation of Mr. Garg a lower stage in time scale provides only one stage down in time scale is not correct. Meaning of "a" cannot be construed as meaning one alone but word "a" should be interpreted as more than one. In the dictionary meaning of "a" means any or every.

46. I have also carefully gone through the case of Kulwant Singh (supra) wherein the Hon''ble Apex Court has observed that a lower stage in time scale held withholding of 2 increments valid but here in the instant case the petitioner was fixed to lowest stage not a lower stage in time scale and the reduction in scale not on immediately lower stage but the petitioner stage was reduced to more than one stage in the time scale.

47. In my considered opinion as per the provisions of Regulation 4(e) reduction to a lower grade means reduction to the lower stage from the stage the petitioner at relevant point of time was working not on the lowest grade. The judgment referred by the respondents is not applicable to the instant case as the Hon''ble Supreme Court in the case of Kulwant Singh (supra) held withholding of 2 increments valid. This is a lower stage in time scale not lowest.

48. In view of this fact the penalty imposed by the disciplinary authority and upheld by the appellate authority to fix the petitioner in lowest stage is herewith modified to lower stage instead of lowest stage.

49. Consequently, the writ petition is herewith partly allowed with no order as to costs.