
(2025) 02 GAU CK 0819
In the Gauhati High Court
Case No : WP(C) Of 8428 Of 2018

Shyama Prasad Bhattacharjee

APPELLANT

Vs

United Bank Of India And 4 Ors.

RESPONDENT

Date of Decision : 11-02-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2025) 02 GAU CK 0819

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S. Chakraborty, Sishir Dutta, S. Mochahari

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. An Order of penalty of reduction in Basic Pay by three stages without cumulative effect, dated 19.05.2017, which was communicated to the petitioner on 23.05.2017 is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

2. There is a checkered history involved in this case.

3. The petitioner was serving as a Scale-IV Officer in the United Bank of India and he had retired from service on 30.09.1999. Just two days prior to his retirement, a charge-memo was issued to him on 28.09.1999 whereby certain charges were levelled against him and on his denial, an enquiry was held which culminated in an order of penalty dated 22.02.2002, whereby, the penalty of reduction of pay scale by six stages was imposed. The aforesaid penalty, which was a major penalty under the United Bank of India Officer Employees' (Discipline and Appeal) Regulation, 1976 (hereinafter the Regulations) was the subject matter of challenge in a writ petition, WP(C) No. 6482 of 2006. The said writ petition was allowed by this Court vide judgment dated 22.05.2014 and the penalty was set aside. However, a liberty was granted

to the respondent Bank to initiate a de novo enquiry by giving the petitioner all the opportunities. This Court had also observed that taking into consideration the long period of the proceeding, no major penalty was to be imposed upon the petitioner.

4. The aforesaid judgment was the subject matter of appeal in WA No. 360 of 2015, which was, however, dismissed by the Hon'ble Division Bench. Thereafter, on 20.01.2017, the petitioner was communicated with the action of the Bank to proceed with a de novo enquiry. However, soon thereafter, vide the impugned order, dated 19.05.2017, the present penalty was imposed, which was communicated to the petitioner on 23.05.2017. It is the legality and validity of this penalty which is the subject matter of challenge in this writ petition.

5. I have heard Shri S. Chakraborty, the learned counsel for the petitioner and Shri S. Dutta, learned Senior Counsel assisted by Ms. S. Mochahari, learned counsel for the respondents.

6. Shri Chakraborty, the learned counsel for the petitioner, by referring to the Regulations, has submitted that there is a distinction between major penalty and the procedure involved and minor penalty and the procedure involved. By drawing the attention of this Court to Regulation 6, the learned counsel has submitted that for imposing a major penalty, a detail procedure is required. However, as per Regulation 8, for imposing a minor penalty, detail procedure is not required. It is submitted that the charges being serious in nature, which were however interfered with by this Court in the earlier round of litigation, the requirement of having an enquiry could not have been done away with. He submits that there is no provision in the Regulation to convert a proceeding under Regulation 6 to a proceeding under Regulation 8. He reiterates that under Regulation 8, there is no requirement to frame definite charges.

7. By drawing the attention of this Court to the part of the judgment dated 22.05.2014, Shri Chakraborty, the learned counsel has submitted that it was recorded in the judgment that no opportunity of cross-examination was afforded to the petitioner on the aspect of re-examination of the management witnesses. This Court had also recorded that documents were not given to the petitioner, which were relied upon by the management. He has also referred to the part of the judgment as per which the Bank was given the liberty to appoint another Enquiry Officer. He submits that these directions were not followed and by taking a shortcut, the Bank had done away with the requirement of an enquiry by taking the excuse of adopting minor penalty procedure. He has also submitted that in the impugned order, more particularly, in Paragraph-16, the charges have been held to be proved. He submits that unless there was a proceeding by giving opportunity to the petitioner, the charges could not have been held to be proved.

8. The learned counsel has relied upon a judgment of the Hon'ble Allahabad High Court in the case of Mahendra Shukla vs. State of Uttar Pradesh and Ors., passed in Writ A No. 49679 of 2023, in which it has been laid down that a major penalty

procedure cannot be converted midway into a minor penalty procedure. He has submitted that shift can be made only when it is permitted by the Rules. By relying upon the judgment of Hon'ble Supreme Court in the case of D.H.B.V.N.L. Vidyut Nagar, Hisar and Ors. vs. Yashvir Singh Gulia, reported in (2013) 11 SSC 173, the learned counsel for the petitioner has submitted that in the case before the Hon'ble Supreme Court, the Rules specifically permitted a shift. However, in the present Regulation, no such powers were vested to make a shift.

9. He has submitted that the decision-making process is not in accordance with the prescription of law laid down in the Regulation. The observation of this Court to impose a minor penalty has been taken as an excuse and there was actually no such direction. The learned counsel, accordingly, submits that the impugned order is liable to be interfered with by this Court.

10. Per contra, Shri Dutta, the learned Senior Counsel for the Bank, at the outset, has submitted that due deference was made to the directions and observations made by this Court in the judgment dated 22.05.2014. He has submitted that the observation made not to impose a major penalty to the petitioner was taken to be a direction. He has submitted that under Regulation-8 of the Regulation, the procedure for imposing a minor penalty has been laid down and minor penalty as such is found under Regulations 4(a) to 4(e). He has drawn the attention of this Court to Regulation 8(2), wherein it has been laid down that even for imposing minor penalties in an appropriate case, enquiry may be done.

11. So far as the present penalty is concerned, the learned Senior Counsel has submitted that the penalty is admittedly a minor penalty consisting of reduction in basic pay by three stages without cumulative effect. He has submitted that by the aforesaid penalty, no practical loss or prejudice has been caused to the petitioner. In this regard, he has relied upon the case of Punjab State Electricity Board Vs. Raj Kumar Goel, reported in AIR 2015 SC 533, wherein, the meaning of 'without cumulative effect' has been explained. For ready reference, the relevant paragraph is extracted herein below:

"11. At the very outset, we may clearly state there is no discord or dispute over the exposition of facts. The controversy has arisen with regard to implementation of the order of punishment imposed by the authority on the delinquent employee. The courts below have opined that though it is mentioned in the order of punishment that there is stoppage of five increments without cumulative effect which is a minor punishment yet the manner of implementation converts it to a major punishment. There can be no cavil over the proposition that when a punishment of stoppage of an increment with cumulative effect is imposed, it is a major punishment. In this regard, we may refer with profit to the decision in Kulwant Singh Gill v. State of Punjab[1991 Supp(1) SCC 504] wherein it has been held that withholding of increments of pay simpliciter without any hedge over it certainly would be a minor punishment but withholding of increments with cumulative effect, the consequences being quite hazardous to the employee, it

would come in the compartment of major punishment. Proceeding further the two Judge Bench stated thus:

'But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his [pic]time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent.'

..."

12. He has submitted that if the averments and contentions of the petitioner is to be accepted, the same may result in a further remand which would be a futile exercise. He has highlighted the aspect that the petitioner had retired from service on attaining the age of superannuation way back in the year 1999 and any directions for remand would not serve any practical purpose. He has informed this Court that the aforesaid mode was adopted to resolve the matter finally by giving due deference to the observations of this Court. He has reiterated that even the pensionary benefits of the petitioner are protected. He accordingly submits that the writ petition be dismissed.

13. The learned counsel for the petitioner in his rejoinder has submitted that the stigma attached to the petitioner by imposition of the penalty will always be there unless the same is interfered with. He has reiterated that the respondent - Bank has come to a finding that the allegations have been proved without holding an enquiry.

14. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

15. As noted above, the Disciplinary Proceeding was initiated against the petitioner just two days before his retirement on 30.09.1999. Be that as it may, the enquiry which had proceeded had culminated in the order of a major penalty dated 22.02.2002. The same penalty, as noted above, was interfered with by this Court vide judgment dated 22.05.2014 passed in WP(C) No. 6482 of 2006, which was also upheld by the Hon'ble Division Bench vide judgment dated 04.04.2016 passed in WA No. 360 of 2015. As mentioned above, while the penalty was interfered, the same was mainly on technical grounds and accordingly, liberty was given to the Bank authorities to have a de novo enquiry. However, this Court, on noticing the long period which had intervened in the meantime, had made the following observation.

"15. Before parting I would like to observe that the charge sheet was issued to the petitioner on 28.9.1999 in respect of the misconduct allegedly done by the petitioner during the year 1993 to 1995. More than 25 years have elapsed and the petitioner also retired from service on attaining the age of superannuation on 30.9.1999. The disciplinary authority therefore, shall, while taking final decision in the proceeding initiated against the petitioner bear in mind the sufferings which the petitioner has already undergone because of the pendency of the proceeding for the last about 25 years. I hope and trust that, in view of the above, the disciplinary authority would not impose major penalty, having regard to the nature of allegation levelled against the petitioner in the charge sheet dated 28.9.1999, more so when there is no allegation of misappropriation of any bank money."

16. The Banking Regulation, as has been mentioned above, lays down the procedure to be adopted while imposing a major penalty as well as the procedure which is concerned with imposition of minor penalty. While major penalty under Regulation 6 would entail a detail procedure, so far as minor penalty is concerned, such procedure is not mandatory, though in a given case, the procedure for imposing a major penalty can also be adopted.

17. The defense of the respondent Bank is that while the remand was made for holding a de novo enquiry, this Court had also made an observation that a major penalty is not to be imposed. The learned Senior Counsel has, accordingly, submitted that the final outcome being stipulated by this Court, a practical view was taken to adopt the Regulation 8 for imposition of minor penalty which does not mandatorily require holding of a detail enquiry. On the other hand, the case of the petitioner, as projected is that unless the Regulation provides for shifting from a major penalty procedure to a minor penalty procedure, the same cannot be done. This Court finds force in the aforesaid contentions made by the petitioner that in absence of any Rules, such conversion cannot be permitted.

18. The learned counsel for the petitioner has highlighted the aspect that even while adopting Regulation 8 to come to the impugned penalty, observations have been made that the charges against the petitioner have been proved. This Court finds force in the contention made on behalf of the petitioner that without holding a de novo enquiry, the aspect of holding the charges as proved was not warranted.

19. Having made the aforesaid observations, the practical aspect of the case cannot be totally overlooked as the endeavour of this Court is also to ensure that litigations come to a finality. The penalty imposed on the petitioner is without any dispute, a minor penalty, which is reduction in basic pay by three stages without cumulative effect. As pointed out by the learned Senior Counsel for the respondent Bank, after completion of the period involved, the petitioner was reverted back to the original position and therefore, for all practical purposes, there is no loss of any nature. He has also clarified that there is no prejudice caused to the petitioner so far as the pensionary benefits are concerned. The

aforesaid submissions are not denied on facts by the petitioner. This Court has also noticed that in the earlier round of litigation, the interference was on technical grounds and not on the merits and the charges as such were not per se interfered with. Though the same may not mean that the charges were held to be proved, the aforesaid aspect would still be a relevant consideration. At the same time in paragraph 15 of the judgment dated 22.05.2014, an observation was made that there was no allegation of misappropriation of any bank money.

20. Towards the end of the argument, the learned counsel for the petitioner has also tried to argue that the impugned order of penalty did not specify the number of years for which the punishment would be in effect. The aforesaid submission, apart from being not based on any pleadings, is held to be unsustainable as it is not the case of the petitioner that after completion of three years, he was not given his position as he would have attained without the penalty. In fact, it is an admitted position that after completion of three years, the petitioner was given all the benefits which he would have otherwise got after completion of the period.

21. Considering the facts and circumstances and taking a holistic view of the matter, this Court is of the opinion that though the observations made in the impugned order regarding the fact that the charges have been held to be proved is not strictly in accordance with law this Court could not find fault with the approach of the respondent Bank to adopt the procedure connected with Regulation 8, i.e., minor penalty, more so, when there is a clear observation made by this Court in the judgment dated 22.05.2014, as quoted above, not to impose major penalty to the petitioner.

22. In view of the aforesaid facts and circumstances, this Court is of the opinion that no effective relief can be granted to the petitioner and accordingly, the writ petition is dismissed.

23. No order as to cost.