

(2010) 10 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

UCO BANK

APPELLANT

Vs

K L Kapoor

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Citation : 2010 0 NCDRC 184 : 2010 4 CPJ 261 : 2010 4 CPR 55

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Rajesh Rattan , R.Vasudevan , Harish Sharma

Judgement

1. UCO Bank (hereinafter referred to as "Petitioner") has filed the present revision petition against the impugned order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as "State Commission").

2. THE brief facts of the case according to the Petitioner are that one K L Kapoor (hereinafter referred to as "Respondent") was served a charge-sheet on 03.02.1995 while working as a Special Assistant at the UCO Bank Branch at Chandini Chowk, Delhi for various acts of omission and commission committed by him. THE Disciplinary authority found him guilty of several charges and recommended his dismissal from service. THE Respondent preferred an appeal before the Appellate authority which was rejected. On his dismissal the Bank released Rs.3,62,378/- which was the Respondent's contribution to his provident fund account, but the Petitioner did not release an equal contribution amount of Rs.3,62,378/- which was the Bank's contribution to Respondent's provident fund. As per the UCO Bank PF Rules a contributor who is dismissed from service on account of fraud and misconduct shall be entitled to only payment of that amount of the PF to which he has contributed and the Bank's contribution shall lapse to the fund. THEREfore, according to the Petitioner it rightly withheld the Bank's contribution to the Respondent's PF Account. Aggrieved by the action of the Petitioner, Respondent filed a complaint before the District Forum on grounds of deficiency in service.

The contention of the Respondent in this case was that orders for forfeiting half of his PF amount was not tenable or justified because the Bank had not been

able to prove that he had caused financial loss or damage to the Bank. In this connection, he had cited the judgment of the Gujarat High Court in Special CA No. 8091 of 1999 (decided on 19.08.2002), wherein, inter-alia it was held that the Bank's contribution to the PF Account of a member may be forfeited where the member employee is dismissed for his misconduct causing financial loss to the Bank but only to the extent of such financial loss. In the instant case the Petitioner Bank was unable to show any evidence or proof that Respondent was responsible for any financial loss, the Respondent has also further contended that he was not even issued the statutory show-cause notice which is required before a decision is taken for forfeiture of the Bank's contribution to the PF Account. This is clearly a violation of the principles of natural justice.

3. THE Petitioner did not appear inspite of service and file its written statement or lead any evidence. District Forum decided the case ex-parte and allowed the complaint. It directed the Petitioner Bank to release the Bank's contribution of PF Account to the complainant amounting to Rs.3,62,378/- alongwith interest @ 10% per annum from the date of termination of the service of the complainant till payment, plus Rs.2000/- as cost. Aggrieved by the order of the District Forum, the Petitioner filed an appeal before the State Commission. The State Commission after hearing both the Parties dismissed the appeal. The relevant portion of the State Commission's order is reproduced below: As regards the plea that the Respondent's services were terminated as the Bank had suffered heavy losses on account of misconduct of the Respondent, there is no record to show that the Bank has suffered any loss on account of misconduct of the Respondent. The matter of termination which landed before the appellate authority of the appellant bank was rejected vide order dated 27.07.2000. Similarly, the case filed by the appellant bank before the Debt Recovery Tribunal in the year 2001 was withdrawn by the Appellant Bank. Unless and until the Bank proves that losses have been caused due to the misconduct or fraud of the employee, the Bank has no authority, not to release the equal contribution made in the provident fund account of the employee. Non-release of the provident fund by the appellant amounts to deficiency in service which means: "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".

4. HENCE, this revision petition. On 24th August 2007, this Commission was informed that the Respondent had expired on 09.01.2007. His legal heirs i.e. his wife and daughter were brought on record as Respondents on his behalf. We have heard Counsel for both parties at length and perused the evidence on record. It is a fact that the Petitioner did not appear before the District Forum despite notice and therefore lost the opportunity to lead any evidence that the Bank had suffered the purported financial loss on account of the Respondent's fraud and misconduct. However, even before the State Commission, Petitioner was totally unable to provide any evidence that the Respondent had caused a

loss "to the tune of Rs.55 to 60 lakh" to the Bank and, therefore, the Bank was justified in not releasing the Bank's contribution to the PF Account. We have also gone through the relevant rules of the Bank's Employees Provident Fund Rules. According to Rule 18, if a contributor is dismissed for fraud or misconduct, the Bank apart from not releasing their part of the contribution is required to declare the amount of loss or damage and is entitled to recover it from the contribution made by the Bank to the individual account of the contributor. In the instant case, no such loss was declared or proved and therefore, the Bank was not at all justified in not releasing their contribution to the Respondent's P F Account as rightly concluded by the learned Fora below.

5. IN view of the above, we see no reason to interfere with the well-reasoned order of the State Commission/ District Forum which are upheld in toto.