
(2013) 09 GAU CK 0032
In the Gauhati High Court
Case No : Writ Petition (C) No. 4479 of 2009

Varinder Chhabra @ V.K. Chhabra

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 GLD 380 : (2013) 5 GLT 349

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : B.R. Dey and Mr. P. Sen, for the Appellant; P.C. Goswami, for the Respondent

Judgement

Biplab Kumar Sharma, J.—The petitioner is aggrieved by the Annexure-XIV order dated 11.11.2008, by which pursuant to the departmental proceeding, the Disciplinary Authority of the respondent bank imposed on him the penalty of compulsory retirement from service. He is also aggrieved by the order dated 18.6.2009, by which his Departmental Appeal was dismissed by the Departmental Appellate Authority, upholding the order of compulsory retirement passed by the Disciplinary Authority. The petitioner while was serving as Senior Manager of the respondent bank was issued with the Annexure-1 show cause notice dated 12.06.2007, alleging serious financial irregularities. Referring to the transactions with as much as 14 organizations, it was alleged in the show cause notice that the petitioner abused his position and failed to discharge his duties with utmost integrity and honesty and also failed to protect the interest of the bank exposing it to grave financial risk.

2. Responding to the show cause notice, the petitioner by his Annexure-II reply dated 14.07.2007 quiet to justify his action. It was stated in the show cause reply that over drawing was allowed with the prior permission of the competent authority from the Regional Office obtained over telephone. Being not satisfied with the reply, so furnished, the respondent bank issued the charge sheet dated

12.10.2007, alleging violation of the provisions of "UCO Bank Officer Employees" (Conduct) Regulation, 1976. Along with the articles of charge, the statement of allegation was also enclosed dealing with the misconduct and the charge attributed to the petitioner. Referring to the financial transactions with the organizations named in the statement of allegation, it was alleged that the petitioner had recommended cash credit beyond his jurisdiction and that no regular inspections of stock were carried out. It was also alleged that the petitioner had allowed disbursement of term loan by crediting directly to the cash credit account of the parties and without ensuring its end dues. The transactions in reference to which the statement of allegation was made against the petitioner involved huge amount and it was alleged that the petitioner exposed the bank to financial risk.

3. Responding to the charge sheet, the petitioner submitted his written statement of defence, on perusal of which, the Disciplinary Authority being not satisfied with the same, ordered for a regular enquiry. The Enquiry Officer appointed for the purpose conducted the enquiry and by his enquiry report dated 30.04.2008, held as follows:-

I finally conclude as follows-

The following allegations and the relevant charges are proved- 1(a), 4(a), (c) and (d), 5(b), 6(a), (b), (g), (i), 9(a) and 13(a).

The following allegations and relevant charges are partially proved-

1-(d), (e), (f), (g), 2(a), (b), 3(a), 4(b), (e), (f), 5(a), (c), 6(b), 7(b)(c), 8(e), (h), (k), 9(d), (e), 10, 11 and 13(c).

The following allegations and relevant charges are not proved-

1(b), (c), (h), 3(b), 7(a), (d), 8(c), (d), (f), (j), 9(b), (c), (f), (g), (h), 12, 13(b) and 14.

4. It will be pertinent to mention here that in the writ petition, the petitioner has not pleaded any procedural irregularity in conducting the departmental enquiry, but what has been pleaded is that the irregularity attributed to the petitioner was condonable more particularly when the transactions did not incur any financial loss to the respondent bank. Placing reliance on the decision of the Apex Court, reported in AIR 2013 SC 1377 (Kailash Nath Gupta Vs. Enquiry Officer (R.K. Rai), Allahabad Bank & Ors.) Mr. B.R. Dey, learned senior Counsel assisted by Mr. P. Sen, learned counsel for the petitioner has submitted that the transactions in respect of which the charges have been leveled against the petitioner were duly transacted by the petitioner without any evil intention and was not for any personal gain. He submits that the procedural irregularity in the financial transactions cannot lead to the extreme penalty of compulsory retirement.

5. Mr. P. Goswami, learned counsel representing the respondent bank on the other hand has submitted that the petitioner by his conduct having put the bank

to huge financial risk and in the enquiry, charges having been established, the petitioner cannot harp upon the purported procedural irregularity only involved in the financial transactions as referred to in the charge sheet. Placing reliance on the decision of the Apex Court reported in *The General Manager (P) Punjab and Sind Bank and Others Vs. Daya Singh*, he submits that it being not a case of establishing the charge without any evidence and that findings recorded by the Enquiry Officer and the Disciplinary Authority and so also the Appellate Authority being perverse, this Court exercising its jurisdiction under Article 226 of the Constitution of India, cannot sit on appeal over those findings so as to return a different findings.

6. I have given my careful consideration to the submissions advanced by the learned counsel for the parties and have also perused the entire materials on record.

7. The allegations made against the petitioner were in respect of financial transactions involving as many as 14 organizations/customers. In the statement of allegations enclosed along with the charge sheet, details of the transactions had been noted/indicated. For a ready reference, two such transactions in reference to two customers are quoted below:-

M/S. Shree Sachkhand Enterprise:-

A cash Credit limit of Rs. 48 Lacs was sanctioned on recommendations of Shri V.K. Chhabra by Regional Office, Chandigarh on 25.08.2005 in favour of the above named party.

On verification of the account, it has been noticed that the conduct of the account was not satisfactory. Heavy over drawings were allowed I the account by Shri Chhabra which continued till November, 2006. He allowed the over drawings beyond his delegated powers for which no permission was obtained from the competent authority. Such over drawings were also not reported to the controlling office as well. Details of over drawings allowed by Shri Chhabra on various dates are given below:

Maximum over drawing allowed in the account was Rs. 47.23 lacs on 22.05.2006 which was regularized on 30.06.2006 only. Further, over drawings were allowed on regular basis and the account was regularized only on 01.08.2006 over drawings have been noticed thereafter also. No permission for allowing such over drawings was obtained by Shri Chhabra from the competent authority nor reporting was made by him in this regard to the control ling office. It has been noticed that there was transfer of funds of the order of Rs. 35 lacs on 25.03.2006 from CC A/C No. 90097 of M/s. S.M.C. packaging Pvt. Ltd. and this party has no business connection with the said party. On 17.03.2006 A sum of Rs. 9 lacs was debited to the party"s account, thus increasing the over drawings in the already over drawn account from Rs. 74.23 lacs to Rs. 83.23 lacs. The said amount of Rs. 9 lacs was transferred to the current account of M/s. Asha Telecom (p) Ltd. having no business relationship. Likewise, a sum of Rs. 9 lacs was debited to the

party's account for credit to the current account of M/s. Asha Telecom (p) Ltd. having no business relationship. Hence, Shri V.K. Chhabra had not ensured the end use of funds and allowed the funds to be misutilized. There are other entries also which represented inter accounts adjustments having no business relation, e.g. on 04.07.2006, a sum of Rs. 10,00,000/- was transferred by Shri Chhabra to CC A/C No. 900936 of M/s. Shree Krishna Electronics to the debit of above party's account without any mandate/debit authority from them and the vouchers have been prepared and signed by him only.

Thus by his above said acts, Shri V.K. Chhabra had allowed heavy over drawings to the above party in order to accommodate him by misusing his lending powers and in gross violation of the guidelines laid in the Loan policy document of the Bank thus putting the Bank in financial risks. He had also unauthorizedly debited the account of the party with large sum without any authority from the party in order to accommodate other parties.

M/S. Jai Balaji Enterprises:

A cash credit limit of Rs. 48 lacs was sanctioned by Regional Office, Chandigarh on 10.12.2005 on recommendations of Shri V.K. Chhabra in favour of above named party.

It has been noticed that Shri Chhabra allowed the over drawings in the account beyond his delegated powers for which no permission was obtained from the competent authority. Such over drawings were also not reported to the controlling office as dwell. Details of such over drawings allowed by him on various dates is given below:

Most of the entries in the account represent adjustments with other accounts such as S.B.A/C No. 9602 (HUF), 9603, CC A/C M/s. P.R.J. Internationals, M/s. Shree Sachkhand Enterprises etc.

It has also been noticed that all the above three concerns namely, M/s. Shree Krishana Electronics, M/s. Shree Sachkhand Enterprises and M/s. Shree Jai Balaji Enterprises are sister concerns where huge over drawings were being allowed by Shri V.K. Chhabra.

Thus, by his above said acts, Shri Chhabra had allowed over drawings to the above party indiscriminately in order to accommodate the firm by misusing his delegated powers and in gross violation of the Loan policy Document of the Bank thus putting the Bank in greave financial risks.

8. Similar allegations had been made against the petitioner against the other parties/customers. In the enquiry, the Enquiry Officer found some of the component of the charges fully established and some partially established. Some of the components were found not proved. The Disciplinary Authority disagreed with the findings of the Enquiry Officer in respect of certain charges held not established. The petitioner was furnished with the note of disagreement along with the copy of the enquiry report. Responding to the same, the petitioner

submitted his representation. Thereafter, the Disciplinary Authority in consideration of the entire materials on record, passed the impugned order of penalty dated 11.11.2008 imposing the penalty of compulsory retirement on the petitioner. The order of penalty dated 11.11.2008 has discussed in details the relevant facts and the evidence on record. As will be evident from the enquiry report and the order of the Disciplinary Authority, the allegations made against the petitioner had been bifurcated during the enquiry into following parts:-

- (a) Regarding Confidential Report on IBA format.
- (b) Discrepancies in the creation of EM.
- (c) Allowing over drawings beyond delegated powers and without permission from RO and not even reported to RO.
- (d) Others regarding Girl not being sent to the controlling office, proper monitoring not done, statement of means not authenticated and pre-sanction and post disbursement reports not on record.

9. The Disciplinary Authority analyzing the evidence on record, including the enquiry report and the note of disagreement and the representation made by the petitioner, found that the allegations/charges leveled against the petitioner were established in the enquiry. It will be pertinent to mention here that the above referred bifurcation of the allegations refers to only one customer and similar bifurcation of the charges has also been made in respect of other customers. Eventually the Disciplinary authority in its final order held the petitioner guilty of the charges.

10. As noted above, the Enquiry Officer has held the petitioner guilty of some of the charges and some of the charges were held partially proved. In respect of certain charges held to be not established during the enquiry, the Disciplinary Authority disagreed with the same and the note of disagreement along with the enquiry report was provided to the petitioner, enabling him to make representation against the same. Upon evaluation of the entire materials on record and having regard to the gravity of the charges leveled against the petitioner, he was imposed with the penalty of compulsory retirement. It is on this count, Mr. Goswami, learned counsel representing the bank submits that the Disciplinary Authority dealt with the matter leniently, otherwise it was a fit case for imposing penalty of dismissal from service or removal from service.

11. Being aggrieved by the aforesaid order of penalty, the petitioner preferred the departmental appeal, which was rejected by order dated 18.06.2009. In the appellate order, the nature of illegalities committed by the petitioner has been noted as follows:-

- i) In respect of taken over borrowal accounts, he did not obtain Confidential Report on IBA format and Statement of accounts for the last six months from the banks wherefrom the accounts have been taken over.

ii) Over drawings were allowed by him indiscriminately on containing basis beyond his delegated powers without obtaining permission from Regional Office to extend undue benefits to the parties by accommodating them.

iii) He had unauthorizedly debited borrowal accounts of some parties with large sums without their authority in order to accommodate other parties having no business connection.

iv) He did not monitor end use/utilization of funds she allowed them loan installments to be directly credited to cash/current accounts of the parties thereby allowing them to siphon off bank's funds.

v) He did not comply with the terms of sanction relating to creation of equitable mortgage or property.

vi) He did not submit Godown Inspection Report to the Regional Office and did not monitor the accounts properly.

vii) He did not create equitable mortgage in the EMTD Register nor was title deed of the property available pertaining to one UCO Shelter loan account in the name of his cousin brother.

viii) In his own cash credit account, there were number of cash deposit entries of substantial amount which seem to be the income from other sources disproportionate to his salary income which Shri Chhabra had failed to report in his annual return of assets and liabilities as statutorily required. BCTT had not been charged where the cash withdrawals were for amounts exceeding Rs. 25,000/- violating the Govt. guidelines.

ix) In one UCO Mortgage Loan Sanctioned by him, he had accepted non-encumbrance certificate and report on title from the lawyer which was issued more than 6 months earlier.

12. The appellate authority also referred to the ground urged by the petitioner in his appeal and rejected the appeal. Thereafter, the petitioner filed the instant writ petition.

13. The petitioner being a bank employee and having occupied a responsible position was depository of confidence of the bank, however, he failed to adhere to the said confidence when he involved in the financial transactions with as many as 14 organizations. Such conduct on the part of the petitioner exposed the Bank to huge financial risk. In *Daya Singh (Supra)*, the Apex Court while upholding the dismissal of the bank employee held that ground of huge loss on FDR's exposing the bank to huge financial risk was not expected of a bank employee. Justifying the penalty imposed, the Apex Court while interfering with the judgment of the Division Bench of the High Court, observed thus:-

18. As held in *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai*, the scope of judicial review for the High Court in departmental disciplinary matter is limited. The observation of this Court in *Bank of India and*

Another Vs. Degala Suryanarayana, are quite instructive:

Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon with a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental, authority, the same has to be sustained. In Union of India (UOI) Vs. H.C. Goel, the Constitution Bench has held;

(a) The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

19. In a number of cases including State Bank of India v. Bela Bagchi (supra) this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner. In Damoh Panna Sagar Rural Regional Bank's case (supra) the Manager of a Bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorized withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for, fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. In spite of a well-reasoned order by the Inquiry Officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments.

14. The submission made by Mr. Dey, learned counsel for the petitioner that charges leveled against the petitioner are of vague and indefinite, is not acceptable in as much as when the articles of charge only referred to the

misconduct attributed to the petitioner in reference to the provisions of the UCO Bank Officers Employees (Conduct) Regulations, 1976, the statement of allegations enclosed therewith gave details of the allegations, to which the petitioner had also responded. As regards the submission that at the best, it was a case of mere irregularity in carrying out the transactions, suffice is to say that if such irregularities had exposed the respondent bank to the risk of huge financial loss and thereby the bank lost its confidence on the petitioner, no fault can be attributed to the Disciplinary Authority in imposing the penalty of compulsory retirement. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, the writ petition stands dismissed.