

Reserved

Neutral Citation No. - 2023:AHC-LKO:79477-DB

A.F.R.

Court No. - 1

Case :- SPECIAL APPEAL No. - 65 of 2019

Appellant :- Nagendra Kumar Pandey

Respondent :- General Manager Uco Bank Hazratganj Lucknow And Ors.

Counsel for Appellant :- Arvind Kumar Jauhari, Meenakshi Singh Parihar, Prashant Kumar Singh, Udai Pratap

Counsel for Respondent :- Shrikant Mishra, Avdhesh Shukla, Prashant Shankar Singh

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

[Per Om Prakash Shukla, J.]

- (1) Heard Sri H.G.S. Parihar, learned Senior Advocate assisted by Ms. Meenakshi Parihar Singh, learned Counsel for the appellant, Dr. Prashant Shankar Singh, learned Counsel appearing for the Bank and Sri Shrikant Mishra, learned counsel appearing for the respondent No.5.
- (2) This intra-court Appeal has been filed, challenging the judgment and order dated 11.12.2018 passed by the learned Single Judge in Writ Petition No. 162 (SS) of 2014, *Nagendra Kumar Pandey v. General Manager/Appellate Authority, UCO Bank and others*, wherein the writ petition preferred by the appellant-petitioner has been dismissed.
- (3) The annals of the case are that the appellant/petitioner had joined on the post of Class IV in the UCO Bank on 17.01.1984 and thereafter he was promoted on the post of Clerk-cum-Cashier on 01.05.2001. Thereafter, he was promoted on the post of Head Cashier on 04.09.2009 and posted at Renukoot where he stayed there till 08.12.2009 and subsequently was transferred

to Jaunpur Branch of the UCO Bank where the appellant/petitioner continued to serve as Head Cashier till passing of the order of dismissal dated 09.01.2013.

- (4) Apparently, the appellant/petitioner was placed under suspension vide order dated 16.08.2011 by the Assistant General Manager/Disciplinary Authority/respondent No.2 in contemplation of some disciplinary proceedings and a show cause notice was also issued on 04.10.2011 levelling certain allegations to the effect that while functioning as Head Cashier at Jaunpur Branch on 31.03.2010, the appellant/petitioner has entered/created an entry of Rs.10,00,000/- (Rupees Ten Lakhs Only) in the account of Zila Panchayat Raj Adhikari, Jaunpur unauthorizedly on the strength of debit vouchers which were neither signed by the competent authority nor by the account holder and the said amount was withdrawn in cash. Similarly, on 25.05.2010, 25.01.2011, 27.01.2011, 08.03.2011 and 30.06.2011, the appellant/petitioner has entered/created entries of Rs.10,00,000/-, Rs.7,00,000/-, Rs.7,50,000/-, Rs.17,00,000/-, Rs.5,00,000/- and Rs.5,00,000/- respectively in the account of Zila Panchayat Raj Adhikari, Jaunpur unauthorizedly on the strength of debit vouchers, which were neither signed by the account holder nor by the competent authority. Subsequently, the aforesaid amounts were withdrawn in cash.
- (5) The appellant/petitioner tendered his reply on 24.10.2011 denying the allegations levelled against him and submitted that no computer was installed on his table and the appellant/petitioner was never assigned the duty in the Accounts Department, however he was only dealing in cash payments in the bank. He has further pointed out that the appellant/petitioner never signed any voucher for the alleged entries and the appellant being Head Cashier was only assigned

the duty to clear and transfer cheques, vouchers etc. upto and including Rs.50,000/- independently and for payment of vouchers upto Rs.50,000/- jointly with an authorized person.

- (6) The aforesaid reply was not found to be satisfactory and as such accordingly, the Assistant General Manager/Disciplinary Authority/respondent No.2 issued a charge sheet to the appellant/petitioner on 06.02.2012, who in turn submitted his reply on 21.02.2012. Thereafter, vide notification dated 26.03.2012, the Chief Manager, UCO Bank, Renukoot, District Sonbhadra was appointed as an Inquiry Officer before whom the appellant/petitioner vide letter dated 18.06.2012 requested for providing of certain documents with regard to payments having been made so that the appellant/petitioner may file his reply in defence. Apparently, the appellant/petitioner submitted his reply on 19.06.2012 stating that as per Clause 7 of the Schedule III Part D of the Circular dated 20.05.2010, the duties and functions of the post of Head Cashier (Class III) are that the Head Cashier shall independently clear and transfer cheques, vouchers etc. (where credits or debits) upto and including Rs.50,000/- (Rupees Fifty Thousand Only) and cash vouchers upto Rs.50,000/- (Rupees Fifty Thousand Only) jointly with an authorized person. Since the Bank Manager was dominating him, he had taken his password and ID who in turn had misused the same.
- (7) It is the case of the appellant that without considering the reply of the appellant/petitioner, the Inquiry Officer has submitted his Inquiry Report on 18.07.2012 to the respondent No.2/Disciplinary Authority stating that all the allegations levelled against him stand proved.

- (8) On receipt of Inquiry Report dated 18.07.2012, the respondent No.2 issued a show cause notice to the appellant-petitioner annexing therewith a copy of the Inquiry Report, requiring him to submit his reply within seven days on 25.08.2012. To this, the appellant-petitioner tendered his reply on 14.09.2012 before the respondent No.2 by reiterating his earlier stand. The appellant/petitioner also submitted that the appellant/petitioner was assigned the duty of cash payment and therefore, there was no occasion for the appellant/petitioner to enter his ID and password coupled with the fact that the appellant/petitioner being Head Cashier – II was not authorized to make such entries.
- (9) According to the appellant/petitioner, without considering the reply submitted by him, the Disciplinary Authority/respondent No.2 had passed the order of dismissal from service dated 09.01.2013. Against the dismissal order dated 09.01.2013, the appellant/petitioner had filed statutory appeal before the respondent No.1/General Manager/Appellate Authority on 07.03.2013 stating therein that no computer was provided and the payment/entries was much more beyond his powers and further, the documents relied upon by the Inquiry officer were not provided by the PO, however the aforesaid grounds have not been properly considered by the appellate authority/opposite party No.1. He further submitted in his reply that when he was on sanctioned leave on 19.08.2010, about 23 transactions took place and further on 19.02.2011, about 26 transactions took place and again on 21.02.2011 about 35 transactions took place. According to the appellant, the then Branch Manager had misused his password and ID. Besides this, on the transactions done on 31.03.2010, 25.05.2010, 25.01.2011, 27.01.2011, 18.03.2011 and 30.06.2011, the

signature of the appellant/petitioner was not there. However, without considering these aspects of the matter, the Appellate Authority has rejected the appeal of the appellant/petitioner vide order dated 07.09.2013. Thus, it was under the aforesaid compelling circumstances, the appellant/petitioner has filed Writ Petition No. 162 (SS) of 2014 which has been dismissed by the learned Single Judge vide impugned judgment and order dated 09.10.2018.

- (10) Sri H.G.S. Parihar, learned Senior Advocate appearing for the appellant/petitioner has taken this Court to various aspects of the matter and has submitted that as per Bank Circular, the Head Cashier – II could not had entered/created any entry over and upto Rs.50,000/- and therefore, the allegation of creating the entry of Rs.10,00,000/- was not justified. Further, he has submitted that the appellant/petitioner was not provided with the computer on his desk and thus, it was difficult for him to keep his password secured.
- (11) Sri H.G.S. Parihar, learned Senior Advocate appearing for the appellant/petitioner has submitted that the finding regarding defalcation of funds by the appellant/petitioner has never been returned. Further, due to non-supply of documents, the appellant/petitioner has been deprived from submitting proper reply and defence to the charges so levelled against him which attracts the violation of principles of natural justice. In this regard, he has relied upon the citation of Apex Court in the case of *State of U.P. v., Saroj Kumar Sinha [(2010) 2 SCC 772]*.
- (12) Learned Senior Advocate has next submitted that the appellant/petitioner had served in the Bank for more than 17 years and during this period, not a single complaint has ever been raised against the appellant/petitioner and considering the past

services of the appellant/petitioner, he prays for modification of the dismissal order passed against him as the dismissal order passed against him is too harsh and it does not commensurate with the charges levelled against him.

- (13) On the other hand, Dr. Prashant Shankar Singh, learned Counsel appearing for the Bank and Sri Srikant Mishra, learned Counsel appearing for the respondent No.5 have submitted that the matter in dispute pertains to disciplinary action taken by the UCO Bank against five employees posted at UCO Bank, Branch Jaunpur situated at District Jaunpur and all the employees were dismissed from service by the disciplinary authority. One of the dismissed employee, namely, ***Niladri Chakraborty has filed Writ-A No. 65358 of 2013*** before High Court of Judicature at Allahabad which was dismissed vide judgment and order dated 20.04.2015 by a Co-ordinate Bench of this Court at Allahabad. The operative portion of the order dated 20.04.2015 reads as under:-

“Petitioner in the said inquiry, has been given full opportunity of hearing and defence of the petitioner has been to the effect that password / ID has been misutilized by others even when he was not in branch office of the Bank and his password/ ID has been misutilized by Panna Lal Manager of the Bank. As far as scam in question is concerned, same is not disputed by the petitioner and petitioner has tried to contend that his password/ID has been misutilized by another person and he cannot be held responsible. Disciplinary authority in the present case has found that wrongful entries had been made using his pass word, and It was his own responsibility to keep secrecy of his passwords, and to see that not only his but also other passwords are being kept secret by the user. He, despite being 2nd in command, promoted a culture in the branch where

password of some was used even when the person was away and no suitable remedial measure was initiated. Disciplinary Authority has considered each and every aspect of the matter and has found that petitioner could not put forward a strong case to refute the allegations and charges level against him, rather in his written brief dated 6.7.2012 submitted by his defence representative he has proceeded to accept all deviation. Disciplinary Authority found in the written brief, that petitioner instead of submitting strong case to refute each and every allegation point wise, made evasive statement of fact and based on material that has come forward, Disciplinary Authority has recorded finding of fact that charges are serious and grave in nature and Bank has suffered huge financial loss on account of gross negligence displayed by the petitioner. Said finding of fact has been affirmed by the Appellate Authority.

Once such is the factual situation, then as far as this Court is concerned, this Court cannot come to the rescue or reprieve of the petitioner, as finding of guilt that has been so returned, is neither perverse nor unreasonable and the punishment that has been so awarded also cannot be said to be disproportionate to charges, as petitioner has been holding position of trust and transaction in question have been taken place by using petitioner's password/ID.”

- (14) Thereafter, the aforesaid writ petitioner has filed a review application which too was dismissed vide order dated 31.07.2015 which reads as under:-

“In the garb of review application, petitioner wants re-hearing of the matter, whereas on the earlier occasion, after detailed hearing, after recording finding that petitioner has been afforded full opportunity of hearing in inquiry, charges have brought home, as entire transaction in Bank has taken place by the use of pass word of petitioner.

In view of this, review application is dismissed.”

- (15) Learned Counsel for the Bank has further submitted that the fraudulent transactions took place on 31.03.2010, 25.05.2010, 25.01.2011, 27.01.2011, 18.03.2011 and 30.06.2011 and on all these days, the appellant/petitioner was present in the Bank. Thus, he cannot say that when he was on leave, his password/ID has been misused by some other persons posted at the Branch.
- (16) The Bank’s Counsel has next submitted that the Inquiry Officer as well as Appellate Authority had given full opportunity to the appellant/petitioner to defend himself and the appellant/petitioner vehemently contested the entire charges levelled against him and after hearing the defence of appellant/petitioner, both the authorities had passed the orders.
- (17) Further submission of learned Counsel appearing for the Bank is that the appellant/petitioner was indulged in misappropriation of government subsidy in collusion with other staff of the Branch and the Bank has taken action against the staff who were involved in the scam. Full opportunity of hearing was afforded to the appellant/petitioner to defend himself but the appellant/petitioner failed to prove his case before the authorities concerned. He also failed to justify as to what had prevented him from apprising the higher officials well-in-time if the Branch Manager had at all allegedly misused his password and I.D., which shows that there is no plausible defence. In this way it indicts his involvement in the alleged fraud alongwith others. Preventive vigilance measures of the Bank were willfully not followed with intent to destroy the

system and produce for a preconceived motive. Thus there was no violation of principles of natural justice while passing the orders by the Inquiry Officer, Disciplinary Authority and Appellate Authority.

- (18) He next submitted that during enquiry, the appellant/ petitioner himself accepted that his USER ID/Password were misused by others when he was not in the Branch. The acceptance of the aforesaid fact by the appellant/petitioner is sufficient to establish that wrongful entries were made by using the ID and password of the appellant/petitioner. Further, he has submitted that the responsibility of the appellant/petitioner to keep secrecy of his password and since the charge levelled against the appellant/petitioner was proved in regular enquiry and the punishment awarded to him is in consonance with the gravity of charges, the Special Appeal filed by the appellant/petitioner is liable to be dismissed.
- (19) Lastly, he has submitted that the pleas raised by the appellant/ petitioner have already been considered by the learned Single Judge and the impugned judgment and order passed by the learned Single Judge being perfect in all respects, there is no need to interfere in the impugned judgment and order.
- (20) This Court has considered the submissions made by the learned Counsel for the parties at length and perused the record available on the record of the present Special Appeal.
- (21) It is available from records that as per Clause 7 of the Schedule III Part D of the Circular dated 20.05.2010, the duties and functions of the post of Head Cashier (Class III) are that the Head Cashier shall independently clear and transfer cheques, vouchers etc. (where credits or debits) upto and including

Rs.50,000/- (Rupees Fifty Thousand Only) and cash vouchers upto Rs.50,000/- (Rupees Fifty Thousand Only) jointly with an authorized person.

- (22) From the record, it is evident that during the period of posting of the appellant/petitioner at UCO Bank, Jaunpur Branch, Jaunpur, an entry of Rs.10,00,000/- was effected in the account of Zila Panchayat Raj Adhikari, Jaunpur and subsequently, the said amount was credited in 20 fictitious savings bank accounts and thereafter the said amount was withdrawn from the respective accounts in cash.
- (23) The question that arises for consideration is as to who should be held responsible for misusing the password/ID of appellant/petitioner?
- (24) The answer to the above question is that the appellant/petitioner is himself to be blamed for the said misuse as he is wholly responsible for the misuse of his own password/ID. Once a person is employed in the Bank and he has been given password/ID, so long as he is in the Bank, it is the legal and moral duty of the appellant/petitioner to keep secrecy of the password/ID. If it is misused, he ought to have reported the matter to the higher officials. Knowingly, the appellant/petitioner himself has shared the password/ID with then Branch Manager, who in turn has made some fictitious entries using his password. Not only on one occasion, but it was done on innumerable occasions which are evident from the reply submitted to the Inquiry Officer/Disciplinary Authority.
- (25) In reply to the appellant/petitioner that the limit fixed by the Bank is Rs.50,000/- being Head Cashier and since the creation of entry of Rs.10,00,000/- is beyond the power granted by the

Bank, he is not liable for the alleged transactions done by the Branch Manager, who has taken his Password/ID forcibly, learned Counsel for the Bank has submitted that the limit fixed by the Bank can be increased on the request of the Officer concerned as well as on the request of the Branch Manager and in the present case, it has been increased on the request of the Branch Manager.

- (26) From the record, it is also evident that full audience has been given to the appellant/petitioner to defend himself but he failed to prove his case before the concerned authorities. Thus, principles of natural justice have not been violated while conducting the inquiry. Not only the appellant/petitioner, but also the other employees who were involved in the fraudulent transactions done in the said Branch have been dismissed from service.
- (27) The appellant/petitioner has been given the required documents during the inquiry proceedings and after considering the reply so preferred by the appellant/petitioner, the order of dismissal and the order of appellate authority have been passed.
- (28) That time and again this Court and the Hon'ble Apex Court have held that in the matters of banking, the responsibility and credibility on the person is on the higher side and devotion to duty as well as the confidence and trust is to be utmost. In **Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar (2003) 4 SCC 364** the Hon'ble Apex Court held that a Bank Officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every Officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity,

honesty, devotion and diligence and becoming of a bank officer. Good conduct and discipline are inseparable from functioning of every officer/employee of the bank. Paragraph 14 of the Apex Court judgment in **Chairman & Managing Director, United Commercial Bank** (supra) says as under:

*“14 A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in **Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69: 1996 SCC (L&S) 1194]** it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.”*

- (29) In the present case, it is available from records that there are concurrent findings by the Enquiry officer, Appellate Authority as well as the learned Single Bench of this Court that the appellant/petitioner being the employee of the bank has illegally debited an amount of Rs. 10,00,000/- from the accounts of the Zila Panchayat and allegedly his username &

password were used to transfer huge money in 20 fictitious accounts, which was subsequently withdrawn. Apparently, the appellant/petitioner has failed to discharge his duty as banker and protect the money and the trust bestowed on him as a Banker and as such the punishment of dismissal cannot be said to be disproportionate to the proved charges. This Court finds that the Apex Court in *Canara Bank v. V.K. Awasthy (2005) 6 SCC 321*, which was a case of the punishment of dismissal on the bank employee, with respect to the quantum of punishment, held that the order of dismissal passed by the Bank did not suffer from any infirmity, as in that case the proved charges clearly established that the employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the Bank. The said judgment at paragraph Nos. 21, 22 and 29 mentions as under:

“21. Coming to the question whether the punishment awarded was disproportionate, it is to be noted that the various allegations as laid in the departmental proceedings reveal that several acts of misconduct unbecoming of a bank official were committed by the respondent.

22. It is to be noted that the detailed charge-sheets were served on the respondent employee who not only submitted written reply, but also participated in the proceedings. His explanations were considered and the inquiry officer held the charges to have been amply proved. He recommended dismissal from service. The same was accepted by the disciplinary authority. The proved charges clearly established that the respondent employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the Bank. In the appeal before the

prescribed Appellate Authority, the findings of the inquiry officer were challenged. The Appellate Authority after analysing the materials on record found no substance in the appeal.

29. Aforesaid being the position, the decisions of the learned Single Judge on the quantum of punishment and of the Division Bench regarding alleged violation of the principles of natural justice cannot be maintained and are, therefore, set aside. The inevitable conclusion is that the order of dismissal as passed by the appellant Bank does not suffer from any infirmity. Appeal is accordingly allowed, but with no order as to costs.”

(30) To the same effect is the case reported as ***M.L.Singla v. Punjab National Bank (2018) 18 SCC 21*** which was also a case of punishment of dismissal imposed on a Bank employee, wherein the Hon’ble Apex Court held that once it is held that there is no violation of principle of natural justice in the domestic enquiry and the charges are serious in nature, the order of dismissal cannot be faulted with nor could be said to be in any way disproportionate to the gravity of the charges. In the said case, the punishment of dismissal was held to be proportionate with the gravity of the charges and was upheld. Paragraph Nos. 44, 46 and 50 of the said judgment in clear terms bring out the aforesaid proposition as under:

“44. Having perused the enquiry proceedings along with the enquiry report, we are of the view that no fault of any nature can be noticed in the domestic enquiry proceedings for more than one reason. Firstly, the appellant was given full opportunity at every stage of the proceedings which he availed; secondly, he never raised any objection complaining of any prejudice of any nature being caused to him before the enquiry officer; thirdly, he received

all the papers/documents filed and relied upon by Respondent-Bank in support of the charge-sheet; fourthly, he filed reply, cross-examined the employer's witnesses, examined his witnesses in defence, attended the proceedings and lastly, the enquiry officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.

46. Once it is held that the domestic enquiry is legal and proper, the next question that arises for consideration is as to whether the punishment imposed on the appellant is just and legal or it is disproportionate to the gravity of the charges.

50. In our opinion, both the charges being serious in nature, therefore, the order of dismissal passed against the appellant cannot be faulted with and nor can it be said to be, in any way, disproportionate to the gravity of charges. In other words, punishment of dismissal was proportionate with the gravity of the charges and hence deserves to be upheld.”

- (31) In any case, this Court cannot be oblivious to the fact that it is not the normal jurisdiction of the superior Courts to interfere with the quantum of sentence, unless it is wholly disproportionate to the misconduct proved. This Court finds that considering the nature of the allegations, its proof and that the petitioner was in banking service, the punishment of dismissal from service is not disproportionate.
- (32) Considering the aforesaid aspects of the matter, the case law cited by the learned Senior Counsel appearing for the appellant/petitioner does not come to his rescue and the reasoning given by the learned Single Judge while dismissing the writ petition is

perfect from all respects and no interference is required in the said finding.

(33) Our view is fortified by the judgment of the Division Bench dated 20.04.2015 passed in *Writ-A No.65358 of 2013* and hence, we are fully in agreement with the observations made in the impugned judgment and order.

(34) For all the reasons stated here-in-above, the Special Appeal filed by the appellant/petitioner lacks merit and is hereby *dismissed*.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 30.11.2023
lakshman