

SUPREME COURT OF INDIA

UCO Bank

Vs.

Sushil Kumar Saha .. Respondent

C.A.No.7515 of 2012

(K.S. Radhakrishnan and Dipak Misra JJ.)

15.10.2012

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. The question that is posed for consideration in this case is whether the disciplinary authority of the erstwhile place of posting, where irregularities stated to have occurred/committed, could institute and complete the disciplinary proceedings against the erring officials (both officer and award staff), notwithstanding the fact that such persons are later posted under the administrative jurisdiction of some other authorities.

3. The High Court, placing reliance on Regulations 5(1) and 6 of the UCO Bank (Discipline and Appeal) Regulations, 1976 [for short 'Regulations 1976'] read with Schedule thereto, took the view that it was only the Deputy General Manager (for short 'DGM') who had the power to initiate disciplinary proceedings against the respondent and not the Assistant General Manager (for short 'AGM'), as per the Schedule to Regulations 1976, since at the time of initiation of proceedings he was under the jurisdiction of the DGM. The High Court, therefore, set aside the entire disciplinary proceedings, including the charge-sheet, enquiry report, final order of punishment and the appellate order and directed the Bank to release all the admissible service benefits and pay admissible dues to the respondent. We are, in this case, concerned with the legality of the order of the High Court.

4. The Respondent joined the services of the Appellant UCO Bank (for short 'Bank') as the Field Officer on 11.11.1978. He was later promoted to the scale of MMGS-III on 17.7.2001. Respondent functioned as the Senior Manager in the Bansdroni Branch of the Bank from 15.10.2001 to 23.8.2005. Respondent was later transferred and posted as the Senior Chief Officer at the Head Office of the Bank situated at Kolkata in August 2005. It was then noticed that while the respondent was working as the Senior Manager at Bansdroni Branch, he had committed serious irregularities in sanctioning loan and had granted indiscriminate excess drawings and overdrawing facilities to various parties beyond his powers and without approval from the Controlling Office. Consequently, a show-cause-notice dated 23.3.2006 was issued by the Chief Officer, Regional Office, Kolkata. Respondent filed his reply to the said show-cause-notice on 17.4.2006. Being dissatisfied with the reply submitted by the respondent, the Bank issued a charge-sheet along with Statement of Allegations dated 15.12.2006 through the AGM (Disciplinary Authority) to hold a domestic enquiry against the respondent in terms of Regulation 6 of the Regulations 1976, levelling 7 charges which are extracted hereunder for easy reference:

- i) that the respondent granted indiscriminate excess drawings over the sanctioned Cash Credit Limits of various parties beyond his delegated power and without prior approval from Controlling Office;
- ii) that while granting unauthorized excess drawings, the respondent concealed the said fact from the controlling office;
- iii) that the respondent failed to induce the parties to observe credit discipline and indulged in granting them unauthorized accommodation detriment to the interest of the bank;
- iv) that before disbursement of credit facility, respondent did not take collateral security in respect of various cash credit borrowers violating sanction stipulation rather extended the enhanced limit in favour of the borrowers etc.;
- v) that the respondent did not take steps for creation of valid stipulation in various cases and failed to effectively monitor/control and supervise the following advance accounts to protect the interest of the bank;
- vi) that the respondent in blatant violation of the sanctioned limits in the case of M/s J.C. Traders released the enhanced amount to the borrower in undue

haste and thus allowed overdrawing approx. Rs.2 crores to the borrower party beyond the amount stipulated for the disbursement against the sanctioned enhanced limit;

vii) That the respondent showed inclination to accommodate various parties in an irregular and unauthorized manner by abusing his official position and deliberately displayed indifference to bank's interest and exposed the bank to financial loss of Rs.598.07 lacs approx. as most of the accounts turned potential NPA/NPA.”

5. Respondent filed his reply to the said charge-sheet on 17.1.2007. The reply submitted by the respondent was considered by AGM in the capacity of the Disciplinary Authority and he found the same unsatisfactory and decided to hold a departmental enquiry against the respondent and appointed Shri Benod Bihari Hazra, Retired Executive of the Bank as an Enquiring Authority to enquire into various charges leveled against the respondent. Detailed enquiry was conducted and, ultimately, the enquiry report dated 12.3.2008 was submitted to the AGM.

6. AGM concurred with the findings of the Enquiring Officer in respect of the charges, including Charge No. 4, which the AGM found to be fully proved. A copy of the enquiry report was served on the respondent, to which he filed a detailed reply. AGM, after considering the reply submitted by the respondent, passed final order on 19.4.2008, in exercise of his powers conferred under Regulation 4 of the Regulations 1976 and imposed penalty of dismissal from service. Aggrieved by the said order of AGM, Respondent filed an appeal before the Appellate Authority, namely DGM, Personnel Services, Department, Head Office. Appellate authority dismissed the appeal vide its order dated 22.7.2008.

7. Aggrieved by the order of the Appellate Authority, respondent filed a writ petition No. 1546 of 2008 before the High Court of Calcutta, which was dismissed by the learned single Judge of the High Court vide its judgment dated 19.11.2009. Appeal was preferred by the respondent to the Division Bench vide A.P.O. No. 342 of 2009 and the Bench vide its judgment dated 19.12.2011 allowed the appeal holding that AGM has no jurisdiction to initiate the disciplinary proceedings. The Division Bench also directed reinstatement of the respondent into service along with all consequential benefits, against which this appeal has been preferred by the Bank.

8. Shri Vivek Tankha, learned senior counsel appearing for the Appellant- Bank, submitted that the High Court has committed a grave error in holding that the

proceedings initiated by AGM were without jurisdiction and ordered reinstatement of the respondent with all consequential benefits. Learned senior counsel also submitted that the respondent had not challenged the validity of the Circular dated 11.8.2004 or the note dated 3.8.2004 and that the High Court, on a wrong interpretation of those provisions, took the view that AGM had no jurisdiction to act as the Disciplinary Authority. In support of his contention, learned senior counsel relied upon the judgment of this Court in *Allahabad Bank v. Prem Narain Pande and Others* (1995) 6 SCC 634.

9. Shri Soumitra G. Chaudhuri, learned counsel appearing for the respondent, submitted that AGM has no jurisdiction to act as the Disciplinary Authority over the respondent and the Division Bench of the High Court has rightly held that the entire disciplinary proceedings, starting from the charge-sheet till the dismissal of the respondent, was without jurisdiction. Learned counsel, placing reliance on Regulations 5(1) and 6 of the Regulations 1976, contended that the DGM alone could have initiated the disciplinary proceedings against the respondent. Learned counsel, therefore, submitted that the Division Bench of the High Court has rightly quashed the entire proceedings and ordered reinstatement of the respondent with all consequential benefits.

10. We are, in this case, concerned only with the question whether the disciplinary proceedings were lawfully initiated by the AGM and whether power has been conferred on him to act as the Disciplinary Authority against the respondent, since the irregularities stated to have been committed while he was working at Bansdroni Branch of the Bank.

11. Regulations 1976 was framed by the Board of Directors of the UCO Bank, in exercise of its powers conferred under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for short 'Act 1970'), in consultation with the Reserve Bank of India and the previous sanction of the Central Government. Regulation 3(g) of the Regulations 1976 reads as under:

“Disciplinary Authority” means the authority specified in the Schedule which is competent to impose on an officer employee any of the penalties specified in regulation 4.”

12. Regulation 4 deals with Minor and Major Penalties. Regulation 5 refers to the Authority to initiate disciplinary proceedings and impose penalties. Regulation 5 is extracted hereunder for easy reference:

“5. Authority to institute disciplinary proceedings and impose penalties:

- 1) The Managing Director or the Executive Director or any other authority empowered by either of them by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the bank.
- 2) The Disciplinary Authority may himself institute disciplinary proceedings.
- 3) The Disciplinary Authority or any authority higher than it, may impose any of the penalties specified in regulation 4 on any officer employee.”

(emphasis added)

Regulations 6(1) and (2) deal with the procedure for imposing major penalties and they are as follows:

“6. Procedure for imposing major penalties:

- 1) No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) and (j) of regulation 4 shall be made except after an inquiry is held in accordance with this regulation.
- 2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an officer employee, it may itself enquire into, or appoint any other public servant (hereinafter referred to as the inquiring authority) to inquire into the truth thereof.”

13. Regulation 18 (unamended) deals with Review and the same reads as follows:

“18. Review:

Notwithstanding anything contained in these regulations, the Reviewing Authority may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that –

i) If any enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in clauses (f), (g), (h), (i) or (j) of regulation 4 and an enquiry as provided under regulation 6 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of regulation 6 and thereafter consider the record of the enquiry and pass such orders as it may deem proper;

ii) If the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of regulation 6, the Reviewing Authority shall give show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass an order after taking into account the representation, if any, submitted by the officer employee.”

14. The Board of Directors of UCO Bank, in exercise of its powers conferred under Section 19 read with sub-section (2) of Section 12 of the Act 1970, approved the amendment to Regulation 18 and the Schedule to the Regulations 1976, in consultation with the Reserve Bank of India and with previous sanction of the Central Government, and a circular No. CHO/POS/11/2002 dated 4.4.2002 to that effect was issued and sent by the Bank to all branches/office, the operative portion of the same reads as follows:

“In the UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976.

a) For regulation 18, the following regulation shall be substituted namely:

18. Review

Notwithstanding anything contained in these regulations, the Reviewing Authority may at any time within six months from the date of the final order, either on his own motion or otherwise review the said order, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which was the effect of changing the nature of the case has come or has been brought to his notice and pass such orders thereon as it may deem fit.

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The existing schedule, the following schedule shall be substituted namely:

a. Scale/ category Disciplinary/Appellate/Reviewing | | of post authority
Authority authority | | xxx xxx xxx xxx | b) Officers in MMG/ Asst.
Gen. General E.D. | | Scale III Manager Manager | | officers in
Grade attached to | | | B posted at office of | | | Branches / respective | | |
Offices under General | | | jurisdiction of Manager | | | Regional Offices
(Operations) | | | headed by | | | Regional Manager | | | in Senior | | |
Management Grade/ | | | Scale IV / Grade | | | A including | | | officers
sent on | | | deputation | | | xxx xxx xxx xxx | c Posted at Head Dy.
General G.M. E.D. | | office or any Manager (Pers) | | other office/
(Personal) | | | establishment | | | coming under | | | direct control of | | |
| | Head Office | | | including the | | | regional Rural | | | Banks /
Regional | | | Training Centres/ | | | Central Staff | | | college and | | |
officers sent on | | | deputation | | | inspecting | | | officers | | | xxx
xxx xxx xxx |

Note- 1. Where a post of any of the above said authorities remains vacant without officiating/ acting arrangement having been authorized, the powers should be exercised by the next higher authority.

2. The powers of any of the above specified authorities may be exercised by any other authority nominated by the Executive Director/Chairman Managing Director who is equal in rank to or higher than the authority specified above.

The amendments to the above regulation and to the schedule came into force w.e.f. 9.2.2002.”

15. The Top Management Committee (for short ‘TMC’) of the Bank convened its 11th Meeting on 26.6.2004 at Bank’s Head Office at Calcutta and the necessity of expeditious disposal of disciplinary cases was discussed in that meeting, though it was not minuted in the proceedings, says the learned senior counsel appearing on behalf of the Bank. Following the TMC meeting held on 26.6.2004, an Inter Departmental Note dated 3.8.2004 was placed by the GM (Personnel) of the Bank

before the Chairman and Managing Director (for short 'CMD') referring to the decision taken for expeditious disposal of disciplinary cases, the operative portion of the same reads as follows:

“NOTE TO CHAIRMAN MANAGING DIRECTOR

Sub: Expeditious disposal of disciplinary action cases – decision taken in the TMC meeting dated 26.06.2004

In terms of existing Schedule of Disciplinary Authorities, consequent upon transfer of any employee (both officer and Award staff) from one region to another, the disciplinary authority changes. As per Head Office Circular No. CHO/PMG/4/2002 dated 16.1.2002 with the transfer of a charge sheeted employee (both officer and award staff), the disciplinary authority over him will remain the same and the said disciplinary authority would complete the RDA cases, irrespective of the fact that the charge sheeted employee has been transferred. This order has been made effective from 1.2.2002. In terms of the above circular, however, if the irregularity is detected after the transfer of the employee, the disciplinary authority at the new place of posting will take appropriate action.

In view of the above, it has been observed that delay occurs in the matter of initiating appropriate action including disciplinary action against the erring employees, who had committed irregularities in his earlier place of posting. Therefore, the TMC in its meeting held on 26.6.2004 decided that henceforth the disciplinary authority of erstwhile place of posting where the irregularities took place, will institute and complete the RDA against the erring official (both officer and award staff) considering the nature and extent of irregularities as the relevant records are readily available with them.

Accordingly, Personnel Department, Head Office proposes to issue a Circular which would be made effective from 16.8.2004, in compliance with the above directives of TMC, a copy of which is enclosed for kind perusal and approval.”

(emphasis added)

16. The note was perused and approved by the CMD of the Bank on 10.8.2004 in exercise of his powers conferred under Regulation 5(1) of the Regulations 1976.

On the next day, i.e. 11.8.2004, the General Manager (Personnel) of the Bank issued a Circular No. CHO/PMG/22/2004 to all the branches for expeditious disposal of disciplinary cases stating, inter alia, as follows:

“As the new disciplinary authority is not naturally aware of the nature and extent of irregularities allegedly committed by the employee in his earlier place of posting and relevant records / documents etc. are kept in the old place of posting, it was decided vide Bank’s Circular No. CHO/PMG/4/2002 dated 16.1.2002 that with the transfer of a charge sheeted employee (both officer / award staff) the disciplinary authority over him would remain the same and the said DA would complete the RDA case irrespective of the fact that the charge sheeted employees has been transferred. The operation of the circular was made effective from 1.2.2002. However the provision of this circular was not made applicable for employees, in whose cases the irregularities were detected subsequently and no appropriate steps for such irregularities which warrant timely action including disciplinary action against the erring officials, often gets delayed as neither the new disciplinary authority nor the old office/branch from where the employee has been transfers, takes proper care to facilitate initiation of RDA and expeditious disposal of the same.

The matter was thoroughly discussed in the Top Management Committee in meeting dated 26.6.2004. To obviate delay in initiation of RDA and conclusion of the same, due to change of disciplinary authority consequent upon transfer of the employee, against whom lapses are attributable for his irregular action in earlier place of posting, the committee decided that henceforth, in terms of bank’s circular No. CHO/PAS/2/2000 dated 23.6.2000 for Award staff and CHO/POS/11/2002 dated 4.4.2002 for officers, the disciplinary authority of erstwhile place of posting, where irregularities occurred/committed, will institute and complete the RDA against the erring officials (both officer and award staff), considering the nature and extent of the irregularities on case to case basis, notwithstanding such employees are presently posted under the administrative jurisdiction of some other authorities. Similarly, the appellate authorities of earlier place of posting of the erring official (both officer and award staff) would take steps for disposal of the appeals preferred against the final orders passed by such disciplinary authorities. This decision has been taken keeping in view the position that the earlier disciplinary authority/appellate authority is better aware of the facts and circumstances of such cases and the relevant documents/records are readily available in the earlier place of posting.

We feel that the above revised guidelines will expedite disposal of RDA cases within the stipulated time frame of four and six months for non vigilance and vigilance cases respectively as directed by the DPC.

The disciplinary authorities/appellate authorities are advised to note this changes for strict compliance, which would come into operation w.e.f. 16.8.2004. Existing cases, where charge sheets / letters of imputations or lapses have already been issued, will however, not be affected by the operation of this circular.

A copy of this circular should be displayed on the notice board for the information of all concerned.”

(emphasis added)

17. We have already indicated that the respondent was working as the Senior Manager at Bansdroni Branch of the Bank from 15.10.2001 to 23.8.2005 and the irregularities were committed or occurred while he was working at that branch of the Bank and the respondent was later transferred to the Head Office on August 2005. While he was working at the Head Office, the Bank came to know of the irregularities committed by him while he was working at the Branch Office of the Bank during the above mentioned period. Consequently, disciplinary proceedings were initiated against him and a charge-sheet dated 15.12.2006 was issued to him by AGM following the above mentioned circular dated 11.8.2004, which conferred powers on AGM since the irregularities occurred or committed when he was functioning at the Branch Office.

18. In the instant case, however, AGM is justified in initiating disciplinary proceedings which is in accordance with the decision dated 3.8.2004 as well as the circular dated 11.8.2004. The Note dated 3.8.2004 which was approved by CMD in exercise of the powers conferred on him under Regulation 5(1) is statutory in nature. Regulation 5 specifically empowers the Managing Director or the Executive Director or any other authority empowered by either of them by general or special order, may institute or direct the disciplinary authority to institute disciplinary proceedings. Further, note 2 to the schedule also stipulates that the powers of the specified authorities may be exercised by any other authority nominated by the Executive / CMD, who is equal in rank or higher than the authority specified therein. The reasons for entrusting the task of initiating the disciplinary proceedings on the disciplinary authority of the erstwhile place of

posting is that the new disciplinary authority might not be aware of the nature and extent of irregularities allegedly committed by the employee in his earlier place of posting, since the relevant records, documents etc. are kept in the old place of posting. The Bank in its wisdom felt that such a course will expedite disposal of the disciplinary cases within the stipulated time framed. This Court is not expected to sit in judgment over wisdom of the Bank in taking such a decision which is to expedite the disciplinary proceedings.

19. Consequently, the AGM who had the disciplinary control over the respondent while he was working at the Branch Office has got jurisdiction to conduct an enquiry with regard to the irregularities committed by the respondent while he was working as the Senior Manager at the Branch Office of the Bank from 15.11.2001 to 23.8.2005. We may indicate that in Allahabad Bank (supra), this Court while interpreting the provisions of Regulations 3, 4, 5(1) (2), 6(3), 21(ii) and 7(3) of the Allahabad Bank (Discipline and Appeal) Regulations, 1976, held that the High Court has taken too narrow a view of the controversy posed before it and has set aside the dismissal on too hyper-technical a view which cannot be sustained on the scheme of the Regulations.

20. We are of the view that, in this case also, the High Court has taken a narrow view while interpreting Regulation 1976, the Note dated 3.8.2004, Circular dated 11.8.2004 read with Regulation 5(1). Omitting to note its purpose and object, that is speedy and expeditious disposal of cases with regard to the disciplinary proceedings against erring officials, the High Court has committed an error in quashing the note as well as the circular.

21. In the facts and circumstances of the case, we are of the view that the Division Bench of the High Court has committed an error in quashing the proceedings initiated by the AGM (Disciplinary Authority) and the punishment imposed. Consequently, the appeal is allowed and the judgment of the Division Bench of the High Court is set aside.