

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1458 OF 2022

(Arising out of SLP(Civil) No(s). 13615 of 2021)

**GENERAL MANAGER(OPERATION-1)/
APPELLATE AUTHORITY,
UCO BANK & ORS.**

....APPELLANT(S)

VERSUS

KRISHNA KUMAR BHARDWAJ

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal is directed against the judgment and order dated 19th February, 2021 passed by the Division Bench of the High Court of Allahabad setting aside the disciplinary proceedings and consequential punishment inflicted upon the respondent initiated pursuant to the charge-sheet dated 15th May, 1993.

3. The respondent while working as an officiating Manager and posted at Taharpur, Bhabisa, Muzaffarnagar, committed gross irregularities in discharge of his duties and for the alleged misconduct, he was served with the charge-sheet along with the articles of charges/statement of allegations dated 15th May, 1993 under Regulation 6 of the UCO Bank Officers Employees'(Conduct) Regulations, 1976(hereinafter being referred to as the "Regulations 1976"). The articles of charges followed with the statement of allegations served upon the respondent delinquent dated 15th May, 1993 are reproduced hereunder:-

**"Head Office
10, B.T.M. Sarani,
Brabourne Road,
Calcutta-700001**

**UCO
Bank**

**Phone: Office 246432
 246365,
 248947
 233997**

Fax -0522-245432

Gram: "AGM UCO"

STD CODE : 0522

**Zonal Office 23, Vidhan Sabha Marg,
Lucknow-226 001 (U.P.)**

ARTICLES OF CHARGES

Mr. K.K. Bhardwaj, PFM No.23213, while functioning as Manager of Taharpur Bhabisa branch had indulged in several acts of omission and commission for which he is hereby charged as under:-

- 1) He had opened two S.B. account Nos. 3646 and 3647 on 24.12.91 without obtaining proper introduction and completion of necessary formalities. He thus failed to discharge his duties with utmost honesty, integrity, diligence and devotion. This was violation of Regulation (3) of UCO Bank Officers Employees' (Conduct) Regulations, 1976.

- 2) While depositing huge amount of Bank's cash in the currency chest branch at Meerut, he did not follow the procedure laid down in the Bank's Manual of Instructions (Cash) and also deviated from the past practice followed by the branch for such cash remittances. He thus failed to discharge his duties with utmost honesty, integrity, diligence and devotion. This was violation of Regulation (3) of UCO Bank Officers Employees' (Conduct) Regulations, 1976.
- 3) By opening the two accounts without getting proper introduction, allowing huge transactions therein, issuing false certificates he facilitated unscrupulous persons to derive pecuniary benefits under Govt. amnesty schemes to which they were not entitled. He thus, failed to discharge his duties with utmost honesty, integrity, diligence and devotion. This was violation of Regulation (3) of UCO Bank Officers Employees' (Conduct) Regulations, 1976.
- 4) Shri Bhardwaj remained absent from his duties for a period of several months without proper sanction of leave, as per Bank's rules. He thus failed to discharge his duties with utmost honesty, integrity, diligence and devotion. This was violation of Regulation (3) of UCO Bank Officers Employees' (Conduct) Regulations, 1976.

Sd/-
Zonal Manager
(Disciplinary Authority)"

10, B.T.M. Sarani, Brabourne Road, Calcutta-700001	UCO Bank	Phone: Office 246432 246365, 248947 233997 Fax -0522-245432 Gram: "AGM UCO" STD CODE : 0522 Zonal Office 23, Vidhan Sabha Marg, Lucknow-226 001 (U.P.)
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STATEMENT OF ALLEGATIONS

Mr. K.K. Bhardwaj (PFM No.23213) was earlier posted as Manager of Taharpur Bhabisa branch. During his tenure as Manager of the said branch, he had indulged in various acts of omission and commission. The details of such acts are given below:-

- 1) While working as Manager of the Taharpur Bhabisa branch, he had opened two S.B. accounts bearing Nos. 3646 and 3647, on 24.12.91 in the names of Shri Ashok Kumar Sharma and Shri Narender Goel as stated in the relative account opening forms, without proper introduction. However, the names of the account holders were written as Ashok Sharma and Narender Kumar Goel in the ledger. For opening these two accounts, Mr. Bhardwaj had for unknown reasons, obtained more than one set of account opening forms against each of the two accounts. The accounts were

apparently introduced by one Mr. Yameen and one Mr. Akshay Kumar whose signatures were not verified. Mr. Bhardwaj did not make discreet enquiries about the identity of the persons before opening the accounts. The accounts were opened and huge transactions were allowed to be conducted through the accounts. Later, it was revealed that the names of the account holders were fictitious. On 14.1.92, one of the two account holders known to the Bank's staff as Narender Kumar Goel called on the branch; asked for the Manager and asserted that Rs. 15 lacs given by him to the Manager for depositing with the Meerut currency chest branch of the Bank, has not been deposited by him.

2) While depositing cash in the currency chest at Meerut on 24.12.91, amounting to Rs. 24 lac and Rs. 20 lac on 1.192, Mr. Bhardwaj did not follow the procedure laid down in the Bank's Manual of Instructions (Cash) and also deviated from the practice followed by the branch to remit cash through a clerk/peon and armed guard of Kandhla branch. The transactions relating to the two accounts mentioned in para-1 above, were personally handled by Mr. Bhardwaj right from the stage of receiving the cash from the account holders to the stage of depositing the cash in the currency chest at Meerut.

3) The Income Tax Department had sent a letter to Taharpur Bhabisa branch enclosing therewith photo copies of three certificates, all dated 4.1.92, favouring Mr. Pawan Vir Singh, Mrs. Sarjit Kaur and Mrs. Jyoti Sachdeva which were issued by Taharpur bhabisa branch under signatures of Mr. K.K. Bhirdwaj, Manager. In the certificates the accounts were stated to be NRE accounts which was not correct, as there were no such NRE accounts at the branch.

The Directorate of Investigation, New Delhi had conducted search u/s 132 of IT Act, of SB A/c No. 3646 and 3647 in the names of Shri Ashok Kumar Sharma and Shri Narender Goel respectively with UCO Bank, Taharpur Bhabisa. It was found that there was a balance of Rs. 95,500 /- in the account of Shri Narender Kumar Goel and Rs.3,17,000/- in the account of Shri Ashok Kumar Sharma. The total amount of Rs.4,12,500/- in these accounts was subsequently seized vide Panchnama dated 8.4.1992.

The ledger of the Bank shows that Shri Narender Goel had deposited Rs.21,00,000/- on Dec. 24, 1991 and Shri Ashok Kumar Sharma had deposited Rs.7,00,000 /- on 4.1. 92 and Rs. 20,00,000/- on 24.12.91 in the Bank. The money was withdrawn from these accounts by getting DDs issued in favour of various persons. During an enquiry by the Directorate of Investigation, it was found that the Demand drafts were issued in the names of persons who were residents of Delhi and these drafts were allegedly claimed to have been made from the Non-Resident (External) accounts. The persons who had received these drafts claimed exemption under the amnesty scheme which was in force upto 31.3.1992 under which any draft/ gift received from Non Resident External accounts had immunity from Income Tax.

In spite of best efforts, the Directorate of Investigation could not trace the persons in whose names the accounts were these. The letters sent to them on the address available in Bank's record came back with the remark that those persons did not exist. Also nothing could be made out from the account opening forms regarding genuineness of the persons. The Income Tax Department, therefore, reached the

conclusion that the accounts were opened in the fictitious names by branch manager Mr.K.K. Bhardwaj and that the money so deposited was the undisclosed money of the branch Manager. Accordingly, notice under Rule 112 A read with Section 132(s) of IT Act was issued by Income Tax Authorities. The reply to the notice was not found satisfactory by them and the Asstt. Commissioner of Income Tax accordingly estimated the undisclosed income as Rs. 48,20,000/-. The amount of tax calculated on the income was Rs. 26,70,800/- and interest payable on the tax was Rs. 2,97,731/-. Therefore, the total amount required to satisfy the liability came to Rs. 29,68,531/ -. The Asstt. Commissioner accordingly issued orders to retain the seized amount i.e. Rs. 4,12,500/- as the tax liability was much higher.

Shri K.K. Bhardwaj was responsible for opening the two SB accounts in fictitious names in an irregular manner, allowing huge transactions therein, issue of certificates regarding the accounts and all consequences thereof.

4. Shri K.K. Bhardwaj remained absent from duties w.e.f. 9 .1. 92 for a period of several months without proper sanction of leave, as per Bank's Rules.

Sd/-
Zonal Manager
(Disciplinary Authority)”

4. After the inquiry was conducted in terms of the procedure prescribed under the scheme of Regulations 1976, the inquiry officer finally held the respondent guilty for charge nos. 1,2 and 3 and charge no. 4 was not found to be proved. The disciplinary authority, after affording opportunity of hearing and after due compliance of the principles of natural justice, confirmed the finding recorded by the inquiry officer in his report dated 30th September, 1995 held the respondent delinquent guilty and imposed punishment vide Order dated 12th August, 1996.

5. The extract of order of the disciplinary authority dated 12th August, 1996 is as under:-

“Now, in exercise of the powers conferred upon me by UCO Bank Officer Employees (Discipline & Appeal) Regulation 1976, I hereby award the following penalties upon Shri KK Bhardwaj in terms of Regulation-4 of the said regulation :-

1. Charge No. 1 -Proved : Reduction to lowest stage in the present time scale.
2. Charge No. 2 -Proved : Reduction to lowest stage in the present time scale, i.e. the Basic pay be reduced to Rs.2100/- (in the old Scale)
3. Charge No. 3 -Proved: If any claim is raised against the Bank by the Income Tax Deptt. it be recovered from the retiral benefits of Mr. Bhardwaj, as admissible to him, as per Bank's rules.
4. Charge No. 4 .. Not proved”

6. On appeal being preferred, the appellate authority while upholding the guilt in reference to charge nos. 1,2 and 3 modified the punishment by an Order dated 14th November, 1998. The relevant part is as under:-

“Charge No. 1 ... Proved ..

The Basic pay of Shri Bhardwaj be reduced by 13 stages from Rs.3660/- to Rs. 2100 (Old Scale, revised Rs.4250/-) plus increments for passing CAFIB (if any allowed) in the tire scale of pay for a period of 2 years w.e.f. 12.8.96. He will earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of

postponing his future increments
of pay.

Charge No. 2 ... -do

-do-

Charge No. 3 -do-

-do-

Charge No. 4 .. Not proved

... Exonerated.

All the punishments will have a concurrent effect.”

7. The order dated 14th November, 1998 inflicting penalty came to be challenged by the respondent delinquent in a writ petition under Articles 226/227 of the Constitution before the learned Single Judge of the High Court of Allahabad.

8. The learned Single Judge and also the Division Bench have proceeded on the premises as if the appellate authority by its Order dated 14th November, 1998 held the respondent guilty only in reference to charge no. 1 and that is the reason for which the punishment was modified and for charge nos. 2 and 3, the respondent employee was exonerated.

9. The admitted fact is that the finding of guilt in reference to charge nos. 1,2 and 3 which was proved by the inquiry officer as indicated in the report of inquiry was confirmed by the disciplinary authority and also by the appellate authority and as a matter of

fact, the appellate authority while upholding the guilt in reference to charge nos. 1, 2 and 3 took a lenient view and modified the punishment vide its Order dated 14th November, 1998. The High Court had proceeded further and recorded a finding that charge no. 1 was completely vague and better particulars were completely missing and after holding that charge no.1 was not specific and clear the respondent was deprived to reply, set aside the disciplinary proceedings and the order of penalty by its judgment and order dated 19th February, 2021 which is a subject matter of challenge in appeal before us.

10. Learned counsel for the appellants submits that the learned Single Judge and also the Division Bench of the High Court have proceeded on an assumption that the appellate authority has not only modified the punishment but has exonerated the respondent employee from charge nos. 2 and 3 which is factually incorrect and the record clearly manifests that charge nos. 1,2 and 3 which were proved by the inquiry officer, after holding inquiry in terms of the procedure prescribed under the scheme of Regulations 1976, was confirmed by the disciplinary/appellate authority and thus, the

premise on which the Division Bench has proceeded in passing the order impugned is not sustainable.

11. Learned counsel further submits that the finding which has been recorded by the Division Bench in the impugned judgment that charge no. 1 was vague and does not disclose the material particulars and that is the reason prejudice has been caused to the delinquent employee in submitting reply and to present his defence before the inquiry officer is also factually not substantiated from the record for the reason that the article of charge no. 1 is specific and explicit and the delinquent employee had participated in the course of inquiry at all stages and it was never the case of the respondent that charge no. 1 was vague or it lacked material particulars or in the absence of details being furnished to him, fair opportunity of hearing has been denied or the principles of natural justice have been violated. In the given circumstances, the interference made by the High Court in the impugned judgment deserves to be interfered by this Court.

12. Learned counsel for the respondent, on the other hand, has not disputed the factual matrix which has been recorded in

reference to charge nos. 1,2 and 3 proved by the inquiry officer and confirmed by the disciplinary/appellate authority but further submits that even from the record of inquiry, the finding which has been recorded by the disciplinary/appellate authority and confirmed at all stages still the punishment, in the given circumstances, which has been inflicted upon him even if examined from the record of inquiry, is not supported by the material on record and consequently the punishment inflicted upon him has been rightly set aside by the High Court.

13. Admittedly, the High Court has proceeded on the premise that charge no. 1 is proved and the respondent delinquent has been exonerated in reference to charge nos. 2 & 3 which is factually incorrect and not supported by the material on record. The option available with this Court is either to remit the matter back to the High Court to examine the record of inquiry and decide the matter afresh in accordance with law or to decide it on merits.

14. Learned counsel for the respondent at this stage, submits that the disciplinary inquiry is of the year 1993 and the matter if remitted back to the High Court may cause great prejudice to him

and made a humble request to decide the matter on merits since remitting the matter back at this belated stage may not be in the interest of the employee.

15. We have heard learned counsel for the parties on merits and with their assistance perused the material available on record.

16. From the record of inquiry, it clearly manifests that the inquiry officer, after holding inquiry as per the procedure prescribed under Regulations, 1976 held charge nos. 1,2 and 3 proved and the disciplinary as well as appellate authority has confirmed the finding of guilt of all the three charges. At the same time, punishment was inflicted by the disciplinary authority after upholding finding of guilt recorded by the inquiry officer but the appellate authority, while upholding the finding of guilt, took a lenient view and modified the punishment by its order dated 14th November, 1998.

17. So far as the scope of judicial review in the matters of disciplinary inquiry is concerned, it has been settled that the constitutional courts while exercising their power of judicial review under Articles 226 or 227 of the Constitution would not assume the role of the appellate authority where jurisdiction is circumscribed

by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. At the same time, the power of judicial review is not analogous to adjudication of the case on merits as an appellate authority.

18. It was never the case of the respondent delinquent even before the High Court that the departmental inquiry was not conducted in accordance with the procedure prescribed under the Regulations, 1976 or there was violation of any provision of Regulations, 1976 or fair opportunity of hearing was not afforded to him in the course of inquiry or there was violation of the principles of natural justice.

19. We have gone through the record of inquiry with the assistance of learned counsel and, in our considered view, the finding which has been recorded by the inquiry officer in reference to charge nos. 1,2 and 3 is duly supported with the material on record and after revisiting the record of inquiry, has been confirmed by the disciplinary/appellate authority. At the same time, while upholding the guilt of the respondent delinquent, the appellate authority took a lenient view and modified the punishment by an Order dated 14th November, 1998.

20. So far as the finding which has been recorded by the High Court in reference to charge no. 1 being vague and unclear, which has deprived the respondent delinquent in submitting reply is concerned, it is factually incorrect. The article of charge no. 1 is clear and specific and leaves no ambiguity in understanding the delinquent in submitting his response. Even it was never the case of the respondent that because of charge no. 1 being vague or unclear, he was unable to submit reply to participate in the course of inquiry.

21. In our considered view, the premises on which the High Court has proceeded even in reference to charge no. 1 is unsustainable and deserves to be set aside.

22. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench dated 19th February, 2021 is accordingly set aside. No costs.

23. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

NEW DELHI
FEBRUARY 18, 2022

.....**J.**
(ABHAY S. OKA)