

Regional Manager, UCO Bank and Anr. Vs. Krishna Kumar Bhardwaj

Civil Appeal No(s). 1457 of 2022 arising out of S.L.P. (Civil) No(s). 13953 of 2021
2022-02-18 | Rastogi, J.
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Full judgment text

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[Civil Appeal No(s). 1457 of 2022 arising out of S.L.P. (Civil) No(s). 13953 of 2021]

Rastogi, J.

1. Leave granted.

2. The instant appeal is directed against the judgment and order dated 21st January, 2021 passed by the Division Bench of the High Court of Allahabad affirming the order of the learned Single Judge dated 19th October, 2019 pursuant to which the inquiry proceedings and consequential punishment inflicted upon the respondent delinquent were quashed and set aside.

3. The respondent delinquent was serving as an Assistant Manager, Sewla Branch on 10th/11th November, 1999 when the incident of theft was reported. The respondent delinquent being one of the joint custodian of cash was responsible for safety of keys of cash/strong room and failed to take all precautionary steps as being indicated in the guidelines of the Bank and because of the alleged negligence on the part of the respondent delinquent in handling the keys in inappropriate manner resulted into theft/loss of cash from the cash safe.

For such delinquency committed by him in discharge of his official duties, he was placed under suspension in exercise of power conferred under Regulation 12 of the UCO Bank Officers Employees (Discipline & Appeal) Regulations 1976(hereinafter being referred to as the "Regulations 1976") by an Order dated 29th November, 1999.

4. Later, chargesheet dated 7th December, 1999 along with four article of charges was served and by a corrigendum dated 13th March, 2000, additional charge no.5 was served upon him. It may be appropriate to quote the extract of articles of charges, dated 7th December, 1999 along with additional charge no.5 by a corrigendum dated 13th March, 2000 as under:-

1. Being one of the joint custodians of cash, Mr. K.K. Bhardwaj was responsible for safety of keys of cash/strong room, he did not keep the keys in his person as per guidelines of the Bank, instead left the keys in the branch premises overnight in an almirah in contravention to the guidelines for safety of keys of cash safe/strong room. He was most negligent and his handling the keys in a perfunctory manner resulted into theft/loss of cash of Rs. 12.00 lacs from the cash safe.

2. Mr. K.K. Bhardwaj, being one of the joint custodians of cash, did not arrange to remit the surplus cash on 10.11.1999 to Currency Chest, Belanganj Branch, Agra even though there was huge cash balance much more than the average, anticipated daily requirement. Thus, he did not take all possible steps to ensure and protect the interest of the Bank and did not discharge his duties with utmost devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officer Employees(Conduct) Regulations, 1976 as amended.

3. Before leaving the branch on 10.11.1999 after close of cash, Mr. K.K. Bhardwaj did not check about the closure of one rear gate between the main hall and passage towards toilet of Sewla Branch, Agra which was left unlocked/opened on 10.11.99. Thus, he did not take all possible steps to ensure and protect the interest of the Bank and failed to discharge his duties with utmost devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officers Employees (Conduct) Regulations, 1976 as amended.

4. Mr. Bhardwaj did not maintain the key register for noting the transfer of keys from one holder to another. He himself along with Chief Cashier had not signed the key register on taking over charge of the keys of cash safe/strong room of the branch. Thus, he failed to discharge his duties with devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officer Employees (Conduct) Regulations, 1976 as amended.

5. That Mr. K.K. Bhardwaj was in hand and glove with some person with an ulterior motive in perpetration of theft of cash at Sewla Branch for Rs.12.00 lacs on 10th/11th November, 1999. Thus he failed to discharge his duties with utmost integrity and honesty, which is violative of Regulation 3 of UCO BANK Officers employees (Conduct) Regulation, 1976 as amended."

5. The inquiry officer conducted departmental inquiry in terms of the procedure prescribed under the scheme of Regulations, 1976 and after affording opportunity of hearing and due compliance of principles of natural justice, held charge nos. 1,3 and 4 proved vide report dated 31st July, 2001. However, charge nos. 2 and 5 were not held proved.

6. It is an admitted fact that the date on which the theft was committed, i.e. 10th/11th November, 1999, Mr. Vinod Kumar Khanna was the Manager of Sewla, Agra Branch. During that period, the present respondent was Assistant Manager and one Mr. K.L. Khandelwal was the Assistant Manager(Cash). Apart from them, four other clerks were posted at Sewla Branch and Mr. Vinod Kumar Khanna was not on duty on the day when the incident had taken place. The signatures of custodian the present respondent delinquent and Mr. K.L. Khandelwal(Assistant Manager(Cash)) were confirmed and in support thereof, document ME2/ 1 to ME2/ 5 were placed on record.

7. The statement of fact was duly recorded by the Inquiry Officer in his report that the respondent delinquent was custodian of keys on the day, i.e., 10th/11th November, 1999 when the theft was committed and he was one of the joint custodian of cash and responsible for safety of keys/cash. After due appreciation of documentary evidence placed on record, the Inquiry Officer found charge nos. 1, 3 and 4 proved against the respondent delinquent. After due appreciation of the documentary evidence on record, the extract of the findings which has been recorded, after detailed scrutiny of facts, by the Inquiry Officer in his report for arriving to a conclusion in holding charge nos. 1, 3 and 4 proved against the respondent delinquent are referred to hereunder:-

Charge No. 1

Findings of the Inquiry Officer:-

I have fully examined the contentions of P.O.& DR/C.S.O. and my findings in this regard are as under:-

Considering all the facts and material placed before me during the inquiry proceedings by the concerned parties, I concur with the arguments advanced and facts established by the Presenting Officer, who has established the facts relating to charge No. 1 on the basis of ME2/ 1 to 5, ME6/ 1 & 2, ME10,, ME10/ 1&2, ME11, ME3, ME13, ME12, ME14, ME15, ME20, ME27, DE30, DE31/ 1&2, DE32, ME1/ 5, ME23, ME24, DE2/ 1to15.

I, therefore, hold that charge No. 1 stands proved against Mr. K.K. Bhardwaj, C.S.O.

Charge No. 3

Findings of the Inquiry Officer:-

I have fully examined the contentions of P.O. and DR/CSO and my findings in this regard are as under:-

Considering all the facts and material placed before me during the inquiry proceedings by the concerned parties, I concur with arguments advanced and facts established by the Presenting Officer, who has established the facts relating to charge No. 3 on the basis of documentary evidence, namely, ME3, ME12, ME13, ME14, ME15, ME16, ME17 & ME18. As per ME14 the C.S.O. had left the branch at about 4.45 p.m. on 10.11.99, and as per ME12 and ME13 the Manager, Mr. V.K. Khanna had left the branch on 10.11.99 at about 2.00 p.m. by informing to the Asstt. Manager, Mr. K.K. Bhardwaj. It is the bounden duty of the Manager to ensure the security of the branch and in absence of the Manager it automatically passes on to the Asstt. Manager, who is second in command in the branch.

As such, the asstt. Manager Mr. K.K. Bhardwaj while leaving the Sewla branch on 10.11.1999, in absence of the Manager, must have fully ensured about the safety and security of the branch in view of alarming/huge cash accumulation (Rs. 27,84,002.17) in the branch as at the close of business on 10.11.99. Laxity in security is also evident from ME15. So, it is well substantiated by P.O. that the Asstt. Manager was lacking in his duty while leaving the branch on 10.11.99 in absence of the Manager, in the matter of security and safety of the branch.

I, therefore, hold that charge No. 3 stands proved against Mr. K.K. Bhardwaj, C.S.O.

Charge No. 4

Findings of the Inquiry Officer:

I have fully examined the contentions of P.O. & DR/CSO and my findings in this regard are as under:-

Considering all the facts and material placed before me during the inquiry proceedings by the concerned parties, I concur with the arguments advanced and facts established by the Presenting Officer, who has established from ME6/ 1&2 that "A record of custody of all important keys should be carried in a key Register. All changes in the custody of keys should be promptly made therein under the signatures of the custodians."

ME8 & ME22/ 1&2 confirm the incomplete records of the postings in the Key Register's relating to Asstt. Manager and Asstt. Manager (Cash) since 1.8.1995 and 2.7.1994 respectively.

It is established from above records that the Asstt. Manager and the Asstt. Manager (Cash) who were the joint custodians at Sewla Agra branch, had not signed the respective key registers on taking over charge of the keys of Cash Safe/Strong Room of the branch and did not maintain the Key Registers upto date.

I, therefore, hold that Charge No. 4, stands proved against Mr. K.K. Bhardwaj, C.S.O."

8. The disciplinary authority, after affording opportunity of hearing to the respondent delinquent, concurred with the findings of the Inquiry Officer and after due compliance of principles of natural justice, inflicted the penalty of dismissal from service vide Order dated 31st December, 2001 with disqualification for future employment.

9. The order of the disciplinary authority came to be challenged by the respondent in the departmental appeal before the appellate authority. The appellate authority, after revisiting the record of inquiry, found justification in the submissions made by the respondent delinquent with regard to charge no. 3 but so far as the finding in reference to charge nos. 1 and 4 is concerned, the appellate authority concurred with the finding recorded by the inquiry officer and confirmed by the disciplinary authority in exercise of power under Regulation 17 of the Regulations, 1976 and modified the punishment by its Order dated 23rd December, 2002, the extract of which is as under:

" I, therefore, in exercise of powers vested in me as Appellate Authority, and in terms of Regulation 17 of UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976, as amended, pass the following Order :

The above punishments shall run concurrently, However, since no moral turpitude is being found against Shri Bhardwaj, he will be paid with all terminal benefits payable to him."

10. The order passed by the appellate authority came to be challenged by the respondent under Article 226 of the Constitution. The learned Single Judge, after taking note of the record of inquiry, arrived to the conclusion that Mr. Vinod Kumar Khanna was the Branch Manager on the date when the incident had occurred, i.e., 10th/11th November, 1999 and the joint responsibility was of the Branch Manager and the Assistant Manager(Cash). Since the present respondent delinquent was the Assistant Manager, he could not be held to be responsible for lapses and set aside the order of punishment inflicted upon the respondent delinquent under its Order dated 19th October 2019.

11. On Letters Patent Appeal preferred at the instance of the present appellant, the Division Bench under the impugned judgment has not taken care to examine the report of inquiry and has just reproduced the findings recorded by the learned Single Judge under the order impugned and dismissed the appeal by an Order dated 21st January, 2021 which is the subject matter of challenge before us.

12. For completion of facts, it may be relevant to note that the factual error was committed by the learned Single Judge and the Division Bench in passing the impugned judgment that Mr. Vinod Kumar Khanna, who was the Manager of Sewla, Agra Branch at that time, was also served with the chargesheet and he too faced departmental inquiry but the allegation against him was that despite being fully aware that the respondent delinquent was the custodian of cash(keeping the keys of the cash safe/strong room in an almirah in the stationery room overnight) and not keeping the same in his personal custody as per rules of the Bank,

he did not take appropriate steps against the staff who was reportedly keeping overnight safety of the keys of the chest in the Branch itself which was a gross negligence which he had committed in discharge of his

duties as a Manager of the Branch and for his supervisory negligence, after chargesheet dated 17th December, 1999 came to be served, he too was held guilty for his supervisory negligence which he had committed in discharge of his duties and was punished by an Order dated 28th February, 2002.

13. Learned counsel for the appellants submits that for the gross misconduct which the respondent had committed in discharge of his duties, the inquiry was conducted in accordance with the procedure prescribed under the Regulations 1976 and it was never the case of the respondent either before the departmental authorities or before the High Court that the inquiry has not been conducted in accordance with the procedure prescribed under the scheme of Regulations, 1976 or the record which was relevant to the charge, and demanded by him, was not made available to him and what prejudice has been caused to him on account of nonavailability of record or the orders passed by the disciplinary/appellate authority are in violation of principles of natural justice while upholding the findings of the inquiry officer in reference to charge nos. 1 and 4 and consequential punishment inflicted upon him.

14. At the same time, learned counsel further submits that the learned Single Judge of the High Court has proceeded on the premise that it was the Manager and Assistant Manager(Cash) who were responsible officers and because of their negligence, theft has been committed on 10th/11th November, 1999 from the cash safe of the Branch which appears to be factually incorrect.

It was the respondent delinquent who was the custodian and incharge of keys at the relevant point of time along with Assistant Manager(Cash) and the finding was recorded by the Inquiry Officer supported by the documentary evidence on record and this was never questioned by the respondent delinquent at any later stage even when he was served with the inquiry report or to the disciplinary or appellate authority while assailing the finding recorded by the inquiry officer in his report.

This is the manifest error which the Division Bench of the High Court has committed in interfering with the domestic inquiry conducted against the respondent delinquent in which charge nos. 1 and 4 were finally held proved against him. In the given circumstances, the interference made by the High Court in the impugned judgment is not sustainable and deserves to be interfered with by this Court.

15. Per contra, learned counsel for the respondent, on the other hand, submits that respondent was the Assistant Manager and the responsibility was of the Manager of the Branch and the Assistant Manager(Cash) and submits that the finding recorded by the inquiry officer in his report is perverse and not sustainable.

16. Learned counsel further submits that the plea was raised by him against the inquiry officer being biased but no one has paid heed to his request and further submits that the documents demanded by him were not made available despite request and the orders passed by the disciplinary/appellate authority being nonspeaking and cryptic in nature are otherwise not sustainable in law.

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

18. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 136 of the Constitution of India is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has earlier been examined by this Court in *B.C. Chaturvedi Vs. Union of India and Others*¹; *Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya*² and recently by a threeJudge Bench of this Court(of which one of us is a member) in *Deputy General Manager(Appellate Authority) and Others Vs. Ajay Kumar Srivastava*³ wherein this Court has held as under:

" 24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decisionmaking process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ

of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except 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 those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."

19. Adverting to the facts of the instant case, the Division Bench has proceeded on the premise that the responsibility was of the Branch Manager along with the Assistant Manager(Cash). Hence, the respondent could not have been held responsible for the lapses of those officers and proceeding on the said foundation, set aside the penalty inflicted upon the respondent delinquent but the record of enquiry clearly manifests that it was a factual error being committed by the High Court while setting aside the domestic inquiry and the consequential punishment inflicted upon the respondent delinquent.

20. In the course of enquiry, a documentary evidence came on record that although Mr. Vinod Kumar Khanna was the Manager of the Branch but the date, i.e., 10th/11th November, 1999 on which the theft was committed, the custodian of cash were the respondent along with the Assistant Manager(Cash). The finding has been recorded by the inquiry officer in his report holding that the respondent delinquent was the custodian of cash in keeping the keys in cash safe/strong room in the almirah of the stationery room overnight and not keeping the same in his personal custody as per rules of the Bank along with Assistant Manager(Cash).

The finding of fact was confirmed by the Disciplinary/Appellate Authority in upholding the guilt of the respondent as he had failed in discharge of his duties as a custodian when the theft had taken place on 10th/11th November, 1999 but the High Court in the impugned judgment has not taken pains to examine the finding recorded by the inquiry officer in reference to the responsibility which the respondent delinquent failed to discharge as a custodian of cash at the relevant point of time when the theft was committed.

21. That apart, what has been recorded by the inquiry officer has been revisited by the disciplinary/appellate authority and after reappraisal of record of inquiry and due application of mind, the appellate authority while exonerating the respondent delinquent from charge no. 3 held charge nos. 1 and 4 proved against him and punished him by an order dated 23rd December, 2002. Neither the learned Single Judge nor the Division Bench of the High Court has taken pains to look into the finding which was recorded by the inquiry officer in reference to charge nos. 1 and 4 and appreciated thereafter by the disciplinary/appellate authority in passing of the order of penalty inflicted upon the respondent delinquent.

22. In our considered view, the finding which has been recorded by the High Court in the impugned order is unsustainable and not supported with the report of inquiry available on record.

23. The submission made by learned counsel for the respondent that the inquiry officer was biased and that caused prejudice to him, suffice it to say, that merely making allegation that he was biased is not sufficient unless supported by the material placed by him either during the course of inquiry or before the disciplinary/appellate authority. Even no submission was made before the High Court also and it deserves no consideration except rejection.

24. So far as the submission regarding nonsupply of document is concerned, inquiry officer has observed that the record which was demanded by the respondent delinquent was made available to him except the one which was confidential in nature still he was permitted for inspection. At the same time, the respondent failed to show as to what prejudice has been caused to him in reference to the alleged nonsupply of the documents demanded by him.

25. The further submission of learned counsel for the respondent that the decision of the disciplinary/appellate authority being a nonspeaking and cryptic in nature is concerned, it is a sorry state of affairs to say so that both the orders of the disciplinary/appellate authority are on record and cogent reasons have been assigned while concurring with the finding of the inquiry officer in order of the disciplinary authority.

The appellate authority also, after due appreciation of the record of inquiry and confirmed by the disciplinary authority, arrived to the conclusion that the finding recorded in reference to charge no. 3 is not proved and held charge nos. 1 and 4 proved on the basis of which he was persuaded to modify the punishment under the Order dated 23rd December, 2002.

26. In our considered view, the High Court has exceeded in its jurisdiction while interfering with the disciplinary proceedings initiated against the respondent delinquent and being unsustainable deserves to be set aside.

27. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 21st January, 2021 is accordingly quashed and set aside. No costs.

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

1 1995(6) SCC 749

2 2017(1) SCC 768

3 2021(2) SCC 612

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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