



GAHC010192632013

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2861/2013

MANISH PURKAYASTHA ALIAS MONISH PURKAYASTHA
S/O LT. MAHINDRA KR. PURKAYASTHA R/O VIVEKANDA ROAD, WARD
NO. 4, P.O./P.S. LALA DIST. HAILAKANDI, ASSAM.

VERSUS

THE UNION BANK OF INDIA and 5 ORS
REP. HEREIN BY ITS CHAIRMAN and MANAGING DIRECTOR, UNION BANK
BHAWAN, 239 BIDHAN BHAWAN, MARG, MUMBAI- 400021.

2:THE CHAIRMAN and MANAGING DIRECTOR
UNION BANK OF INDIA
UNION BANK BHAWAN
239 BIDHAN BHAWAN MARG
MUMBAI- 400021.

3:THE GENERAL MANAGER

P and HR
INDUSTRIAL RELATIONS DIVISION
CENTRAL OFFICE
UNION BANK BHAWAN
239 BIDHAN BHAWAN MARG
MUMBAI- 400021.

4:THE DEPUTY GENERAL MANAGER
P
INDUSTRIAL RELATIONS DIVISION
CENTRAL OFFICE
UNION BANK BHAWAN
239 BIDHAN BHAWAN MARG
MUMBAI- 400021.



5:ASSISTANT GENERAL MANAGER

CUM DISCIPLINARY AUTHORITY
UNION BANK OF INDIA
HUMAN RESOURCE MANAGEMENT DEPARTMENT
FIELD GENERAL MANAGERS OFFICE KOLKATA
225- C
A.J.C. BOSE ROAD
1ST FLOOR
ALEPE COURT
KOLKATA- 700020.

6:DEPUTY GENERAL MANAGER

UNION BANK OF INDIA
NODAL REGIONAL OFFICE
G.N.B. ROAD
CHANDMARI
GUWAHATI-781024

Advocate for the Petitioner : MR.S BORTHAKUR

Advocate for the Respondent : MR.S CHAKRABORTY

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

JUDGMENT

Date : 23-05-2023

Heard Mr. S. Borthakur, learned counsel for the writ petitioner. Also heard Mr. M. Sharma, learned counsel representing the respondent Bank.

2. The order of penalty of compulsory retirement from service, dated 21-04-2011, imposed upon the petitioner has been challenged in the present writ petition, *inter-alia*, on the ground that the penalty is shockingly disproportionate to gravity of the alleged misconduct.



3. The petitioner's case, in a nutshell, is that he was an employee of the Union Bank of India. While serving as the Branch Manager of Tezpur Branch, a departmental proceeding was initiated against the petitioner on the following charges:-

1. *Failure to take all possible steps to ensure and protect the interest of the Bank.*
2. *Failure to discharge his duties with utmost devotion and diligence.*
3. *Failure to discharge his duties with utmost honesty and integrity.*
4. *Acting otherwise than in his best judgment in the performance of his official duties.*

4. Although the writ petitioner had denied the charges brought against him by contending that the alleged manipulation of accounts and payment of gratification made by him was for the purpose of business development, the disciplinary authority did not accept his explanation and went ahead with the departmental enquiry. Eventually, the Enquiry Officer had submitted his report dated 25-11-2010 holding that all the allegations brought against the petitioner had been proved. Based on the enquiry report dated 25-11-2010, the impugned order of penalty has been issued.

5. Mr. Borthakur submits that during the pendency of this writ petition, his client had crossed the age of retirement and therefore, the only relief, that the writ petitioner is seeking at this point of time is for interference with the order of penalty. Since the basic ground on which the petitioner is assailing the order of penalty is that the same is shockingly disproportionate to the gravity of the alleged misconduct, it would be necessary for this Court to reproduced the findings and observations of the Enquiry Officer as reflected in the Enquiry Report with regard to the allegations brought against the petitioner.



6. With regard to the allegation No. 1, the conclusion of Enquiry Officer is as follows:-

“It is true that the accommodations granted to four customers, namely, M/S Jaiswal Trading, M/S N.K. Enterprise, M/S Ved Prakash Sharma & M/S A-One Traders were recovered with interest from those beneficiaries. Nevertheless the manner in which Shri Manish Purkayastha (CSO) allowed such accommodation is unethical. The entries are fake and therefore, cannot be justified by any consideration.”

7. Insofar as the allegation No. 2 is concerned the Enquiry Officer has found as follows:-

“I, therefore, hold that Allegation No. 2 stands proved. However, as regards payment of illegal gratification of Rs. 26,000.00 to the Project Director, DRDA, Tezpur, Shri Sanjay Sharma, Assistant Manager, Tezpur Branch debited Suspense account – Miscellaneous on 06.10.2007, received payment (Exhibit: MEX – 18) and paid the money to the Project Director in presence of DW-1 Shri Lakhi Kanta Sharma.

Shri Manish Purkayastha (CSO) is not associated with this payment.”

8. Insofar as the allegation No. 3 is concerned, here also, the Enquiry Officer has held that the allegation was proved. The observations made in the enquiry report on the above count are as follows:-

“Allegation No. 3 stands proved. However, the undue accommodation amounting to Rs. 106.00 lacs extended to four customers of the branch has been fully recovered with interest. The interest amount was recovered from the parties on 28.02.2009 in presence of Regional officials. The CSO had also deposited Rs. 3,84,598.00 being the total amount of wrongful/ spurious debits to Expenditure Heads vide his letter dated 17.03.2009 and requested the Bank to appropriate the amount towards financial irregularities committed. The whole amount has been appropriated under various Expenditure Heads.”

9. From a careful reading of the enquiry report, it is apparent that the petitioner was involved in making certain fake entries and extending benefits to some persons. However,



according to the petitioner's counsel such activities were directly connected with the idea of business development of the Bank and the same did not result into any loss being incurred by the bank.

10. Mr. Sharma, learned counsel for the respondent has also not denied or disputed the fact that the bank did not directly suffer any loss due to the activities of the petitioner but he has argued that the respondent Bank, being a nationalized Bank and being the custodian of the public money, cannot tolerate such indiscipline on the part of its employees. Therefore, these are cases where stringent disciplinary measures are required to be enforced by the Bank.

11. After hearing the arguments advanced by learned counsel for the parties, this Court is of the opinion that there can be no doubt in this case that the writ petitioner had in fact indulged in certain activities which were not strictly in terms of the Bank's norms and regulations. To that extent, it cannot be said that the charges of misconduct are totally unfounded. However, at the same time this Court cannot also lose sight on the fact that the petitioner has not denied any of the allegations brought against him but has explained his conduct by trying to justify the same in the manner indicated above. The petitioner could be wrong in his understanding and judgment but the fact that there was no intent on his part to embezzle any fund of the Bank or to cause loss and injury to the Bank is also apparent from the materials available on record. The Enquiry Officer has also come to a conclusion that the Bank did not suffer any loss due to the activities of the writ petitioner. Viewed from that angle, although this Court is of the opinion that the petitioner cannot be given a clean chit, yet, having regard to the facts and circumstances of the



case, this Court finds sufficient force in the submission of Mr. Borthakur that the penalty of "compulsory retirement from service" imposed upon the petitioner by the impugned order dated 21-04-2011 is shockingly disproportionate to the gravity of misconduct brought against him.

12. In view of the above, the order dated 21-04-2011 is hereby set aside. It will, however, be open for the respondents to impose any other penalty upon the petitioner which is less than the penalty of "compulsory retirement".

13. Since the petitioner has already attained the age of superannuation, the question of directing his reinstatement in service does not arise at this stage. The order, as provided by this Court, be passed within a period of 03 months from date of receipt of a certified copy of this order.

Depending on the revised penalty that may be imposed upon the petitioner in terms of the order passed by this Court, his pensionary benefits be revised/ recalculated and the arrear amount, if any, found to be due and payable, be released within a further period of 03 months.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant