

Surjit Ghosh vs Chairman & Managing Director, United ... on 6 February, 1995

Equivalent citations: 1995 AIR 1053, 1995 SCC (2) 474, AIR 1995 SUPREME COURT 1053, 1995 AIR SCW 1060, 1995 LAB. I. C. 609, 1995 (2) SCC 474, 1995 SCC (L&S) 529, (1996) 1 BANKLJ 98, (1995) 29 ATC 373, (1995) 1 LAB LN 840, 1995 LABLR 593, (1995) 2 SCT 352, (1995) 2 SERVLR 11, (1995) 1 CURLR 390, (1995) 70 FACLR 817, (1995) 2 LABLJ 68, (1995) 2 JT 74 (SC)

Author: P.B. Sawant

Bench: P.B. Sawant

PETITIONER:

SURJIT GHOSH

Vs.

RESPONDENT:

CHAIRMAN & MANAGING DIRECTOR, UNITED COMMERCIAL BANK & ORS.

DATE OF JUDGMENT 06/02/1995

BENCH:

SAWANT, P.B.

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SAWANT, P.B.

FAIZAN UDDIN (J)

CITATION:

1995 AIR 1053

1995 SCC (2) 474

JT 1995 (2) 74

1995 SCALE (1) 451

ACT:

HEADNOTE:

JUDGMENT:

1. The appellant was appointed as a Probationary Officer in the respondent Bank on 4th October, 1971 and confirmed in that post on 24th February, 1973. In August 1975, the appellant was charged for having demanded and taken Rs. 1,900/- as bribe from one Sk. Rahul Amin. He was suspended

from service on 23rd August, 1975. However, the suspension was revoked with immediate effect by another order of 12th December, 1975. Thereafter, he was again placed under suspension w.e.f 10th July, 1976 when the Central Bureau of Investigation took up the investigation of the case. Prosecution was launched against him on 28th July, 1977 under Section 6 [1] (d) read with Section 5 [2] of the Prevention of Corruption Act, 1947. The learned Sessions Judge convicted him of the said offence by his order of 14th July, 1978. , In appeal, the High Court reversed the order of conviction and acquitted him of the charge by its order of 4th December, 1979.

2. It appears that in the meanwhile, the Bank dismissed the appellant from service by its order of 17th August, 1978 pursuant to the order of the Session's Court. Against the said order, the appellant approached the High Court by a writ petition on 9th February, 1979. On his acquittal by the High Court on 4th December, 1979, the appellant by his letter of 11th January, 1980 wrote to the Bank for reinstating him in service with retrospective effect but the Bank did not comply with his request. However, the High Court in the writ petition pending before it, by its order of 25th June 1980 set aside the order of dismissal from service and directed the Bank to reinstate the appellant in service with all consequential benefits.

3. The appellant was reinstated in service pursuant to this order and was posted as Assistant Manager at the Hazari Road"" Branch. On 17th August, 1982, he was transferred to Assistant General Manager's [AGM] office, West Bengal Division-I and on 23rd August, 1982 he was served with a letter alleging therein that on 14th August, 1982 while he was working as Assistant Manager at the Hazari Road Branch, he had prepared and singed one debit voucher for Rs.4,800/- being the amount on account of "interest payable on deposit FDR" mentioning therein the fixed deposit No.223638/108/79. It was alleged in that letter that the appellant had obtained a token against the said voucher by presenting it to the token clerk and had also verified the signature of the FDR older on the reverse of this voucher, and on this voucher being posted in the ledger of the ledger Clerk and passed by the Pass ing Officer in good faith, the appellant had received a cash amount of Rs.4,800/against the said voucher etc.

4. The appellant was also placed under suspension from the date of the service of the said letter i.e., 23rd August, 1982 under Regulation 12 [1] (a) and (b) of the United Commercial Bank Officers [Discipline and Appeals] Regulations, 1976 (the Regulations). The departmental in- quiry was thereafter held with the Manager of the branch of the Bank as the Inquiry Officer to conduct the inquiry. The Inquiry Officer by his report dated 28th May, 1985 held the appellant guilty of two of the charges levelled against him. On the basis of the said report, the respondent No.2, the Deputy General Manager, Zonal Officer, West Bengal Zone of the Bank by his order dated 14th November, 1985 dismissed the appellant from service. Aggrieved by the said order the appellant approached the High Court by way of a writ petition. The learned Single Judge of the High Court dismissed the same and the Division Bench in appeal confirmed the said order. It is aggrieved by the decision of the High Court that the present appeal has been preferred.

5. Some grievances have been made by the appellant in the present appeal touching upon the illegalities in the conduct of the proceedings such as that [a] the disciplinary proceedings were initiated by an incompetent disciplinary authority in breach of Regulation 8 [2] (iii) read with

Regulation 3 [g] of the Regulations; [b] the statement of witnesses recorded earlier were not supplied to him in breach of Regulation 8 [10] [b] (iii) and [c] he was denied opportunity to explain circumstances appearing against him in evidence in breach of Regulation 6 [17] of the Regulations. However, it is not necessary to go into the merits of the said grievances since we are of the view that one of the objections taken by the appellant to the dismissal viz., that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations, goes to the root of the dismissal order. The undisputed facts relating to the said grievance of the appellant are that the disciplinary action was taken against him by the Deputy General Manager. As the Regulations stood then, the disciplinary authority for officers in Grades E, D, C and B [excepting Divisional Managers in Grade B] was the Divisional Manager/AGM [Personnel] and the appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager, the review lay to the General Manager. It is not disputed that the appellant was an officer in Grade D. Hence in his case, as per the said Regulations, the disciplinary authority was either the Divisional Manager or the AGM [Personnel] and if the action was taken by either of them, he had an opportunity to appeal to the Deputy General Manager or any other officer of the same rank, and thereafter he had a further right of review to the General Manager. However, since the action against him was taken by the Deputy General Manager although the Divisional Manager and AGM [Personnel] were available for taking the action, the appellant was denied the right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank, therefore, suffers from an inherent defect.

6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM [Personnel]. According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/ appellate

authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

7. The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside.

8. The question, however, is what consequential order should be passed in the present case. It will not be fruitful to send the matter back to the Bank for rehearing of the matter by the named disciplinary authority since the appellate authority which is the higher authority has already taken a decision in the matter and it cannot be expected that the lower authority will take a different decision. These proceedings have been pending against the appellant right from the year 1982 till this day and the appellant has been out of employment for all these years. At one stage, the appellant had offered to forego all the arrears of his salary provided he was reinstated in service on the post to which he would be entitled at present on the basis of his continuous service till date. We had suggested to Shri Gupta appearing for the respondent-Bank to take instructions in the matter: The respondent-Bank, however, has chosen to reject the offer and has instead suggested that the Bank would like to pay compensation to the appellant since it has lost confidence in him. We have considered the charges against the appellant and we find that apart from the fact that much can be said in favour of the appellant in support of his contention that the charge has been trumpeted against him. The inquiry also prima facie suffers from defects as pointed out above, though we must add that we have not gone into the merits of the said defects. The appellant is an ex-Army officer. What is further, the compensation amount, if directed to be paid would come to about Rs.20 lakhs-.

The Bank is a nationalised Bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the Bank feels that it has lost confidence in the employee. He can certainly be placed in a department where he has nothing to do with the monetary transactions of the Bank, such as the establishment section etc., even assuming that the Bank has reasons to lose confidence in him.

9. We are informed at the Bar that the post to which he would be entitled would be in Grade Scale IV with the basic pay of Rs.5,350/- per month which is on par with the contemporary existing officers of the Bank who have been promoted to Grade Scale IV on and from 29th May, 1993. We, therefore, direct as follows[a] the appellant should be paid a compensation of Rs.50,000/- in lieu of his claim for arrears of salary; [b] he should be reinstated in service with continuity of service and without loss of seniority in the post to which he would be entitled today on the basis of his continuous service, within four weeks from the date of receipt of this order.

10. the appeal is allowed accordingly. Since we have directed the payment of compensation, there will be no order as to costs.