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UMESH KUMAR PAHWA

v.

THE BOARD OF DIRECTORS UTTARAKHAND GRAMIN
BANK & ORS.

B

(Civil Appeal No. 796-799 of 2022)

FEBRUARY 11, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

C *Constitution of India: Art.226 – Appellant who was serving as the Branch officer at the Respondent Bank was accused of taking bribe from the borrower of the bank – Case of borrower-complainant that he had applied for loan which was sanctioned but the loan amount was later reduced by the appellant – Bank issued a show cause notice to the Appellant – Appellant denied the allegations and in turn levied allegations of malice and bias against the*
D *Chairman of the Bank – The disciplinary proceedings were commenced which found the Appellant guilty and he was removed from service – Appellant filed an appeal before the Appellate Authority which was dismissed – Aggrieved appellant filed writ petition before the High Court – During the pendency of this writ*
E *petition, the Appellant filed another writ petition seeking a writ of mandamus commanding the Bank to grant promotion from the date when those junior to him were promoted – High Court while hearing both writs together, dismissed the first writ petition thereby confirming the order of removal from service without further entering into the merits of the writ petition which was for promotion – Hence*
F *the instant appeal – Held: The charges proved in the departmental proceedings showed that there was no financial loss caused to the Bank and on the contrary a decision was taken by the appellant to reduce the loan amount in the case of the complainant, which can be said to be the decision in the bank’s interest – Moreover, the fact that the appellant had worked for 28 years and during those 28*
G *years, there were no allegations against him, the punishment of removal for the charges proved and the misconduct established, is too harsh and disproportionate – However, considering the fact that it can be said to be a case of loss of confidence in the employee by the Bank, it is deemed just and proper to substitute the punishment*
H *from that of removal of service to that of compulsory retirement – As*

regards the second writ petition, the High Court had dismissed the said writ petition for promotion primarily on the ground that once he was removed from service, there was no question of considering his case for promotion – However, the appellant claimed the promotion from the date when his juniors came to be promoted – The material available on record showed that in the earlier round of litigation, the High Court had directed the Bank to consider his case for promotion considering his ACR for the Financial Years 1999-2000 to 2003-2004 – The said exercise was required to be done by the Bank – Therefore, the second writ petition is remanded to the High Court to decide the same afresh in accordance with law and on its own merits.

Partly allowing the appeals, the Court

HELD: 1. The High Court has observed that the appellant demanded a bribe from complainant solely on the basis of his cross-examination. However, he had a reason to speak against the appellant as his loan amount was reduced from Rs. 1,50,000/- to Rs.75,000/- by the appellant. It is the case on behalf of the appellant that considering the material and his capacity, a decision was taken to reduce the loan amount from Rs.1,50,000/- to Rs.75,000/- which was taken in the interest of the bank. There are allegations of bias against the Chairman right from the very beginning. Even at one point of time the Chairman was charge-sheeted for the offences under Sections 323, 354, 504, 506 IPC on the complaint filed by the wife of the appellant and on the basis of complaint filed by a woman delegate. It is true that subsequent thereto the criminal proceedings were quashed by the High Court. There were specific allegations of bias against the Chairman and the Bank right from the initiation of the departmental proceedings made by the appellant. [Para 3.1][425-D-G]

2. The charges proved in the departmental proceedings showed that there is no financial loss caused to the Bank and on the contrary a decision was taken by the appellant to reduce the loan amount from Rs.1,50,000/- to Rs.75,000/- in the case of the complainant, which can be said to be the decision in the bank's interest. Moreover, the fact that the appellant had worked for 28 years and during those 28 years there are no allegations against

A him, in the facts and circumstances of the case, the punishment
of removal for the charges proved and the misconduct established,
is too harsh and disproportionate. However, considering the fact
that it can be said to be a case of loss of confidence in the
employee by the Bank, it is deemed just and proper to substitute
B the punishment from that of removal of service to that of
compulsory retirement. [Para 3.2][425-G-H; 426-A-B]

3. So far as the submission on behalf of the appellant that
the appellant has not conducted any misconduct and the finding
recorded by the inquiry officer on the charges proved are perverse
is concerned, the High Court is justified in holding that in the
C limited jurisdiction available to the High Court in exercise of
powers under Article 226 of the Constitution of India, the High
Court is not required to reappraise the evidence and/or
interfere with the findings recorded by the inquiry officer accepted
by the disciplinary authority. However, the order of removal of
D service can be said to be disproportionate to the charges and
misconduct held to be proved. [Para 4][426-C-D]

4. The High Court has dismissed the said writ petition for
promotion primarily on the ground that once he is removed from
service there is no question of considering his case for promotion.
E However, it is required to be noted that the appellant claimed
the promotion from Scale II to Scale III from the date when his
juniors came to be promoted w.e.f. 30.03.2005. From the material
available on record, it appears that in the earlier round of litigation
being Writ Petition (S/B) No.65 of 2012, the High Court had
directed the Bank to consider his case for promotion considering
F his ACR for the Financial Years 1999-2000 to 2003-2004. The
said exercise was required to be done by the Bank. Therefore,
so far as the Writ Petition (S/B) No.267 of 2013 is concerned, the
same is required to be remanded to the High Court to decide the
same afresh in accordance with law and on its own merits. [Para
G 5][426-E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 796-
799 of 2022.

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From the Judgment and Order dated 17.07.2018 of the High Court of Uttarakhand at Nainital in Writ Petition No. 04(S/B) of 2013 and Writ Petition No. 267(S/B) of 2013 and Impugned final Order dated 08.01.2020 in Review Application MCC No. 1039 and 1026 of 2018. A

Ms. Priya Hingo Rani, Sr. Adv., Azim H. Laskar, Ganesan Subbian, Jyoti kumar Singh, Chandra Bhushan Prasad, Advs. for the Appellant. B

D.S. Patni, Sr. Adv., Suhaas Ratna Joshi, Mahendra Singh Rawat, Ms. Mallika Joshi, Dharmendra Barthwal, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 17.07.2018 passed by the High Court of Uttarakhand at Nainital in Writ Petition (S/B) No.4 of 2013 and Writ Petition (S/B) No.267 of 2013 as well as the order passed in the review applications dismissing the same vide common order dated 08.01.2020, the employee - the original writ petitioner has preferred the present appeals. C D

2. That the appellant herein was serving as a Branch Officer at Pratap Pur Branch of the Respondent – Bank. He has put in 28 years’ of service. While he was serving at Pratap Pur Branch during the period 27.06.2008 to 21.11.2008, a complaint was made against the appellant by one borrower of the Bank namely Karamjeet Singh on 17.09.2008 alleging that the appellant had sanctioned the limit of loan of Rs.1,50,000/- which was later on reduced to Rs.75,000/-. Four other persons also made the complaint against the appellant. On receiving the complaint against the appellant - the Chairman of the Bank transferred him to another branch of the Bank, during pendency of the inquiry pertaining to aforesaid complaints. A show cause notice was issued to the appellant seeking his explanation. The appellant replied to the said show cause notice stating therein that the allegations in the complaint are baseless, frivolous and fabricated. He also made allegations of malice and bias against the Chairman of the Bank. The disciplinary proceedings were initiated against the appellant. A charge-sheet was issued to him and following charges were framed: E F G

“1. He did not discharge his duties with integrity and honesty and took such actions and committed such omissions which showed lack of probity and integrity on his part. H

- A 2. He committed serious violations of duty and breach of trust reposed in him by the Bank and misused his official position.
3. In the performance of his official duties and in exercise of powers conferred on him, he unauthorizedly exceeded his authority /powers and did not report the same for/or obtained approval/
- B confirmation from higher authorities for such excessive actions.
4. He flouted instructions of the higher authorities.
5. He adopted such steps and took such actions as were derogatory, prejudicial and detrimental to the interest of the bank.
- C 6. He misrepresented and suppressed material facts from higher authorities.
7. He knowingly and willfully violated Bank's rules and established procedures for his personal gains.
8. Due to his acts, bank is likely to suffer financial losses.
- D 9. He committed such acts which tarnished the image of the Bank.
10. He did acts unbecoming of an officer of the Bank"

2.1 That the Bank decided to initiate an inquiry for a major punishment. The appellant participated in the departmental inquiry. The complainant, Karamjeet Singh was also examined during the inquiry. The inquiry officer held the charges No.1, 2, 3, 4, 5, 7, 8, 9 and 10 as proved. On receipt of the inquiry report the appellant submitted his reply and contended that the findings of the Inquiry Officer are perverse to the material placed on record and against the principle of natural justice. He also made allegations of bias against the Chairman of the Bank.

F Thereafter after considering the inquiry report and giving opportunity to the appellant, the disciplinary authority/Chairman of the Bank passed an order of removal of the appellant from service. The appellant preferred an appeal before the Appellate Authority and the Appellant Authority dismissed the appeal vide order dated 20.12.2011. Feeling aggrieved

G against the order of removal from service, the appellant preferred the present writ petition before the High Court being Writ Petition (S/B) No.4 of 2013.

2.2 During the pendency of Writ Petition (S/B) No.4 of 2013 the appellant also preferred another Writ Petition No.267 of 2013 seeking a writ of mandamus commanding the Bank to grant promotion from Scale

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II to Scale III from the date when those junior to him were promoted w.e.f. 30.03.2005. Both the writ petitions were heard together. By the impugned judgment and order the High Court has dismissed Writ Petition (S/B) No.4 of 2013 confirming the order of removal from service of the appellant. As the order of removal had been confirmed, the High Court without further entering into the merits of the case also dismissed Writ Petition (S/B) No.267 of 2013 which was for seeking promotion from Scale II to Scale III officer from the date when those juniors to the appellant were promoted i.e. w.e.f. 30.03.2005.

Feeling aggrieved and dissatisfied with the impugned common judgment and order passed in Writ Petition (S/B) No.267 of 2013 as well as W.P. (S/B.) No.4 of 2013, the employee delinquent has preferred the present appeals.

3. We have heard the learned counsel for the respective parties at length.

3.1 Having considered the impugned judgment and order passed by the High Court and even the findings recorded by the Inquiry officer it appears that the High Court has observed that the appellant demanded a bribe from Karamjeet Singh solely on the basis of his cross-examination. However, it is required to be noted that he had a reason to speak against the appellant as his loan amount was reduced from Rs.1,50,000/- to Rs.75,000/- by the appellant. It is the case on behalf of the appellant that considering the material and his capacity a decision was taken to reduce the loan amount from Rs.1,50,000/- to Rs.75,000/- which was taken in the interest of the bank. There are allegations of bias against the Chairman right from the very beginning. Even at one point of time the Chairman was charge-sheeted for the offences under Sections 323, 354, 504, 506 IPC on the complaint filed by the wife of the appellant and on the basis of complaint filed by a woman delegate. It is true that subsequent thereto the criminal proceedings were quashed by the High Court. Be that it may, there were specific allegations of bias against the Chairman and the Bank right from the initiation of the departmental proceedings made by the appellant.

3.2 Even looking to the charges proved in the departmental proceedings we find that as such, there is no financial loss caused to the Bank and on the contrary a decision was taken by the appellant to reduce the loan amount from Rs.1,50,000/- to Rs.75,000/- in the case of Karamjeet Singh -the complainant, which can be said to be the decision

- A in the bank's interest. Moreover, the fact that the appellant had worked for 28 years and during those 28 years there are no allegations against him, in the facts and circumstances of the case, we are of the opinion that the punishment of removal for the charges proved and the misconduct established, is too harsh and disproportionate. However, considering the fact that it can be said to be a case of loss of confidence in the employee
- B by the Bank, we deem it just and proper to substitute the punishment from that of removal of service to that of compulsory retirement.

4. So far as the submission on behalf of the appellant that the appellant has not conducted any misconduct and the finding recorded by the inquiry officer on the charges proved are perverse is concerned, the
- C High Court is justified in holding that in the limited jurisdiction available to the High Court in exercise of powers under Article 226 of the Constitution of India, the High Court is not required to reappreciate the evidence and/or interfere with the findings recorded by the inquiry officer accepted by the disciplinary authority. However, as observed hereinabove
- D the order of removal of service can be said to be disproportionate to the charges and misconduct held to be proved.

5. Now in so far as the dismissal of Writ Petition (S/B) No.267 of 2013 is concerned, at the outset it is required to be noted that the High Court has not dealt with and considered the same on merits independently.
- E The High Court has dismissed the said writ petition for promotion primarily on the ground that once he is removed from service there is no question of considering his case for promotion. However, it is required to be noted that the appellant claimed the promotion from Scale II to Scale III from the date when his juniors came to be promoted w.e.f. 30.03.2005. From the material available on record, it appears that in the earlier round of
- F litigation being Writ Petition (S/B) No.65 of 2012, the High Court had directed the Bank to consider his case for promotion considering his ACR for the Financial Years 1999-2000 to 2003-2004. The said exercise was required to be done by the Bank. Therefore, so far as the Writ Petition (S/B) No.267 of 2013 is concerned, the same is required to be
- G remanded to the High Court to decide the same afresh in accordance with law and on its own merits.

6. In view of the above and for the reasons stated above the impugned Judgment and Order passed by the High Court passed in Writ Petition (S/B) No.4 of 2013 is hereby modified to the extent substituting
- H the punishment from that of removal of service to that of compulsory retirement.

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The appellant shall be entitled to all the benefits which may be available to him by converting the punishment from that of removal of service to that of compulsory retirement. So far as the impugned judgment and order of the High Court in Writ Petition (S/B) No.267 of 2013 is concerned, in view of the above and for the reason stated above and as the High Court has not decided the said writ petition on merits, we set aside the impugned judgment and order as well as the order dated 08.01.2020 dismissing the said Writ Petition (S/B) No.267 of 2013 and remand the matter to the High Court to decide the same afresh in accordance with law and on its own merits.

Present appeals are accordingly allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

Devika Gujral and Amarendra Kumar
(Assisted by : Iram Jan, LCRA)

Appeals partly allowed.