

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 03.01.2014

+ **W.P.(C) 8339/2005**

A.N. RASTOGI Petitioner

versus

CENTRAL BANK OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the petitioner: Mr D.K. Rustagi & Mr Gaurav Arora, Advocates.

For the respondents: Mr R.S. Mathur, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. This is a petition filed against the order dated 21.7.2003 passed by the disciplinary authority and order dated 14.1.2004 passed by the appellate authority, in an appeal preferred by the petitioner.

2. It may be pertinent to note that an amended writ petition was filed, in which, an additional prayer was sought qua the respondents herein, which was to the effect that the retiral benefits ought to be paid to the petitioner along with interest at the rate of 18 per cent per annum. The amounts which, according to the petitioner, have been withheld, are tabulated in paragraph (GA) of the amended writ petition.

3. The challenge to the aforementioned impugned orders arises in the background of the following broad facts:-

3.1 It appears that three persons by the names of Mr. Dilbhajan Singh Sandhu, Mr. Baljinder Singh and Mr. Hari Narain Sharma approached

respondent No.1 bank for grant of overdraft facilities. Apparently, the request was made to the Assistant Regional Manager of respondent No.1 bank by the said persons on 10.3.1998.

3.2 Consequent thereto, the branch manager of the Patel Nagar Branch, one Ms. S. Kapoor, vide letter dated 11.3.1998, directed the petitioner herein to obtain transfer of Kisan Vikas Patras (KVPs), which were offered as security by the persons named hereinabove, who were wanting to obtain overdraft facilities from respondent No.1 bank.

3.3 The petitioner, in compliance with the directions issued by the Manager, left for Armapur, which is where the post office was located, which apparently had issued the KVPs, whose transfer was required to be obtained by the petitioner.

3.4 The petitioner, admittedly, flew into Kanpur on 12.3.1998 and thereafter proceeded by road to Armapur post office, located in the outer periphery of the Kanpur city. It is not in dispute that the total number of KVPs, which the petitioner was required to get transferred, were 3394 in number, amounting to a total value of Rs.2 crores. The petitioner, however, obtained endorsements from the Sub-Post Master only in respect of 9 KVPs amounting to a value of Rs.90,000/-.

3.5 Admittedly, the petitioner returned from Armapur and was back in Delhi on the same date, i.e. 12.3.1998. Since the next day, i.e. 13.3.1998, was a bank holiday, he submitted his report to the branch manager, i.e. Mrs. S. Kapoor, qua the transfer obtained vis-a-vis the 9 KVPs, on 14.3.1998.

3.6 It appears that on 16.3.1998, Mr. Dilbhajan Singh Sandhu handed over the remaining KVPs to the Branch manager. Evidently, the respondent no.1 bank, to its misfortune, after having released a sum of Rs.1.40 crores in

favour of the aforementioned persons, who had sought overdraft facilities from it, discovered that the KVPs, numbering 3394, handed over to it, in the form of security, were fake. Consequent thereto, criminal as well as departmental proceedings were commenced.

3.7 Obviously, the departmental proceedings were restricted to employees of the bank, i.e. the petitioner and the Branch manager, Ms. S. Kapoor. I am informed by the learned counsels for the parties that since the amount involved was more than Rs.10 lakhs, departmental enquiry was entrusted to the Central Vigilance Commission (CVC).

3.8 According to the petitioner, it was the CVC which had recommended an enquiry by the CBI in its report dated 5.8.1998.

3.9 Consequent thereto, a FIR was registered in the matter on 24.8.1998.

4. Admittedly, both the petitioner and the branch manager, Ms. S. Kapoor, are arrayed as accused, amongst others, in the criminal action, which is proceeding in the appropriate court.

4.1. As indicated above, consequent to the initiation of the departmental proceedings, a charge sheet was served upon the petitioner on 12.10.1999. The charge framed against the petitioner was found to be proved by the enquiry officer. The report of the enquiry officer was placed before the disciplinary authority which, vide its order dated 21.7.2003, directed compulsory retirement of the petitioner from the respondent no.1 bank's service in terms of Regulation 4(f) of the Central Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 (in short the 1976 Regulations). The order of the disciplinary authority indicated that the compulsory retirement would be effective from the date of the petitioner's superannuation, i.e. 28.2.2002.

4.2 The petitioner, being aggrieved by the order of the disciplinary authority, preferred an appeal with the concerned appellate authority. This appeal was filed on 15.9.2003.

4.3 The appellate authority, however, vide its order dated 14.1.2004, rejected the appeal preferred by the petitioner and, consequently, affirmed the order of the disciplinary authority.

5. It is against the aforementioned orders of the disciplinary authority and the appellate authority that the present writ petition has been preferred.

5.1 Mr. D.K. Rustagi, who appears for the petitioner, has assailed the impugned orders on the following grounds:-

5.2 That the remit of the mandate, issued to the petitioner, which was contained in the communication dated 11.3.1998, was to obtain transfer of KVPs in favour of respondent No.1 bank, and not to ascertain, its genuineness.

5.3 It is not the case of the authorities below and, to that effect, no finding has been returned, that the endorsements made by the Sub-Post Master, one Mr. S.N. Pandey on 9 KVPs, in respect of which, transfer was obtained by the petitioner, was not genuine. What was found fault with, was that, the relevant details with regard to the 9 KVPs were not found included in the records i.e. register maintained in that behalf by the post office in issue; that is, the Armapur post office.

5.4 The petitioner, had an understanding with the branch manager, Ms. S. Kapoor, that he was required to obtain, by way of a sample, a transfer of only some KVPs, and that, it was not the remit of the petitioner to obtain transfer of all KVPs, which numbered 3394 in all.

5.5. The understanding with the branch manager, Ms. S. Kapoor, was that,

insofar as the remaining KVPs were concerned, one of the borrowers, one Mr. Dilbhajan Singh Sandhu would accompany the petitioner and get the needful done in the matter. In this regard, it was submitted that the branch manager, Ms. S. Kapoor, on 16.3.1998, accepted the remaining KVPs, ostensibly duly endorsed in favour of respondent no.1 bank, which were handed over to her by Mr. Dilbhajan Singh Sandhu.

5.6. That there is no case made out against the petitioner of forged endorsements on 9 KVPs and, as a matter of fact, according to him, no loss was incurred by respondent No.1 bank.

5.7 The finding, that the endorsements on 9 KVPs are forged and/or fake; is reached, without any material on record.

5.8 The impugned orders seek to compulsorily retire the petitioner after he attained the age of superannuation, which was not permissible in law. In support of this submission, it was stated that the petitioner attained the age of superannuation on 18.2.2002 and was to be relieved from service with effect from 28.2.2002. It was submitted that the order of compulsory retirement, which was passed on 21.7.2003, if at all, ought to have been made effective prior to 18.2.2002. In the alternative, it was submitted that assuming the order of compulsory retirement could have been made effective between the period 18.2.2002 and 28.2.2002, it could not have been made effective, as is indicated in the order dated 21.7.2003 from 28.2.2002; which was the date on which the petitioner was to be relieved from service in the ordinary course.

5.9 The last submission made on behalf of the petitioner was that respondent No.1 bank had wrongly withheld the retiral benefits of the petitioner, assuming without admitting that the impugned orders can be

given complete effect to, in law, in their present form. In other words, it was contended that even if the petitioner is not able to persuade this Court to set aside the impugned orders, he would be entitled to post retiral benefits, which have been wrongly withheld by respondent No.1 bank.

6. Mr. Mathur, who appears for the respondents, largely relied upon the impugned orders. It was Mr. Mathur's contention that this was a case of clear dereliction of duty. The petitioner, according to Mr. Mathur, was directed by his superior officer, i.e. the Branch manager, to obtain transfer of the KVPs, in issue, which number 3394.

6.1 It was submitted by Mr. Mathur that against the said KVPs the petitioner had obtained transfer of only 9 KVPs. Mr. Mathur submitted that the petitioner went about his job in a callous fashion inasmuch as he not only availed the hospitality of the borrowers but also left it to one of the borrowers, to obtain transfer of the remaining KVPs.

6.2 In this behalf, Mr. Mathur drew my attention to the fact that the air tickets for commuting between Delhi and Kanpur were furnished by the borrower(s) and also the fact that the road transport to ferry the petitioner between Kanpur and Armapur was made available by the borrower(s).

6.3 According to Mr. Mathur, this was contrary to the practice in vogue for conducting such exercises by bank officers.

6.4 Mr. Mathur submitted that the argument of the learned counsel for the petitioner that there was some oral understanding that only a sample check had to be made with regard to the transfer of KVPs, is a submission, which is not borne out from the record. It is, in fact, Mr. Mathur's contention that it is contrary to the letter dated 11.3.1998, which does not limit the mandate to 9 KVPs.

6.5 Mr. Mathur further submits that respondent No.1 bank has certainly suffered a loss as after sanction the amount was released to the borrowers. It was discovered that all KVPs, including the 9, which were got transferred in favour of respondent No.1, were discovered to be forged and/or were fake. Resultantly, respondent No.1 bank was left without security for the amount released, which was a sum of Rs.1.40 crores.

6.6 In the alternative, Mr Mathur, argued that even if it is assumed that no loss was caused to respondent no.1 bank, that would not dilute the gravity of the misconduct committed by the petitioner. The failure of the petitioner to discharge his duties in terms of his mandate was sufficient to establish the misconduct, with which, he was charged. According to Mr. Mathur, the factum of loss was not relevant for reaching this conclusion. For this purpose, Mr Mathur relied upon the following judgments of the Supreme Court: *The Disciplinary Authority-cum-Regional Manager & Ors. vs Nikunja Bihari Patnaik JT 1996 (4) S.C. 457* and *Suresh Pathrella vs Oriental Bank of Commerce (2006) 10 SCC 572*.

6.7 Insofar as the petitioner's submission with regard to imposition of punishment of compulsory retirement was concerned, Mr. Mathur relied upon Regulation 20(3)(iii) of the Central Bank of India (Officers') Service Regulations, 1979 (in short the 1979 Regulations) and Regulation 4(f) of the 1976 Regulations. Based on the aforementioned Regulations, Mr. Mathur submits that the officers against whom disciplinary proceedings are initiated continue in service till such time such proceedings were concluded and final orders are passed in that behalf.

6.8 Mr. Mathur submits that, therefore, there was no impediment once the proceedings were completed for the disciplinary authority to pass an order of

compulsory retirement with retrospective effect. It was Mr. Mathur's contention that it would, therefore, make no difference in so far as the legal efficacy of the order of compulsory retirement is concerned based as to the date from which the order is made effective. In other words, it was his contention that there is no error of law or otherwise in the order of compulsory retirement in its effective date coinciding with the usual date of superannuation of the petitioner.

6.9 In respect of the benefits, which the petitioner claims that were wrongly withheld, Mr. Mathur says that respondent No.1 bank was empowered to withhold the retiral benefits; albeit, in accordance with the prevailing Regulations applicable to employees, who are awarded the punishment of compulsory retirement. Insofar as the pensionary benefits were concerned, Mr. Mathur contended they would be governed by Regulation 33 of the Central Bank of India (Employees') Pension Regulations, 1995 (in short the 1995 Regulations) for those employees who were compulsorily retired from service.

7. As regards the forfeiture of gratuity, reliance was placed by him on the Central Bank of India Employees' Gratuity Fund Rules (in short CBI Gratuity Fund Rules). My attention was drawn to Rule 12 of the aforementioned rules which, according to Mr. Mathur, empowered forfeiture of the gratuity. As a matter of fact, Mr. Mathur, referred to communication dated 31.1.2004 whereby, the decision with regard to forfeiture of the gratuity of the petitioner is reflected. As per the said communication, which is addressed by the Senior Manager of respondent No.1 bank to the Assistant General Manager, Regional Office, Delhi, the amount of gratuity which has been forfeited is a sum of Rs.3.5 lacs.

7.1 Similarly, with regard to the forfeiture of leave encashment, Mr. Mathur relied upon clause 4 of the circular dated 31.1.2001, which is issued under the 1979 Regulations.

7.2 Mr. Mathur, thus, submitted that there was no merit in the writ petition and the same ought to be dismissed. The procedure prescribed under the relevant Rules and Regulations has been complied with. It was his submission that there was no breach of the principles of natural justice as due opportunity has been given to the petitioner to defend his case.

REASONS

8. I have heard the learned counsels for the parties and perused the record. What emerges from the record is as follows: The petitioner was mandated by Ms. S. Kapoor, manager of the branch, to obtain transfer of KVPs, which were issued by the post master, located at Armapur, Kanpur, transferred in favour of respondent no.1 bank. For this purpose, the petitioner was required to visit the post office at Armapur.

8.1 Admittedly, the persons who sought overdraft facilities, i.e., Mr Dilbhajan Singh Sandhu, Mr Baljinder Singh and Mr Hari Narain Sharma, had offered KVPs numbering 3394, as collateral securities for availing the aforementioned overdraft facilities.

8.2 The mandate with regard to the above was issued in favour of the petitioner by the branch manager, Ms S. Kapoor, vide communication dated 11.03.1998. The said communication also referred to the fact that the party would also be accompanying the petitioner for getting the needful done.

8.3 It is also an undisputed fact that the petitioner for this purpose did travel to Kanpur and, thereafter, to Armapur, which is located in the outer periphery of Kanpur city, on 12.03.1998.

8.4 It is also not disputed that the petitioner returned to Delhi, the very same day.

8.5 There is no dispute raised by the petitioner that as against 3394 KVPs, he had obtained endorsements on 9 KVPs, in all, amounting to Rs.90,000/-.

8.6 Since, 13.03.1998, was a bank holiday, the petitioner furnished a report to the branch manager on 14.03.1998, indicating inter alia therein the factum of having obtained endorsement on 9 KVPs. The record also discloses that on 16.03.1998, Mr. Dilbhajan Singh Sandhu, furnished the remaining KVPs, with the ostensible endorsements, in favour of respondent no.1 bank. The record reveals that respondent no.1 bank having been assured, albeit falsely as it transpired later, that KVPs were genuine and consequently the endorsements were also genuine, released the sanctioned amount in favour of the borrowers, referred to above. The amount released in favour of the borrowers was a sum of Rs.1.40 crores.

8.7 Since, respondent no.1 bank discovered that the collateral securities offered in its favour in the form of KVPs were forged, departmental proceedings, were initiated against its employees. The CVC, enquired into the matter based on the charge against the petitioner, which broadly entailed that the petitioner had returned to Delhi, without performing the task entrusted to him of ensuring the transfer of all KVPs, furnished by the borrowers. The statement of imputation of misconduct clearly adverts to the fact that respondent no.1 bank discovered that not only the 9 KVPs, which the petitioner had got endorsed for transfer in favour of respondent no.1 bank were forged, but the others were also forged.

9. It is in this background that the CVC concluded, upon hearing the petitioner and the management i.e., the respondent no.1 bank, and after

assessing the evidence placed before it, that:

(i) As per the communication dated 11.03.1998 the petitioner was required to obtain transfer of all KVPs in favour of respondent no.1 bank from the post office located at Armapur, Kanpur and not merely a transfer of, a sample number of KVPs, in respect of which, transfer was obtained by the petitioner.

(ii) There was no evidence on record of any understanding arrived at by the branch manager Ms S. Kapoor with the petitioner with regard to the contentions advanced by the petitioner that only a sample number of KVPs had to be transferred in favour of respondent no.1 bank. In this regard the CVC noted that the branch manager herself was a charged officer and that she had not been produced either by the petitioner or by the management, i.e., respondent no.1 bank, as a witness.

(iii) That since the postal authorities at Armapur disowned the so called transfer recorded on the 9 KVPs; it demonstrated that the entire transaction of purchase and even transfer of KVPs in respondent no.1 bank's favour was fake and / or forged.

(iv). The report submitted by the petitioner to the branch manager on 14.03.1998, which had an annotation inserted, apparently at a later stage, to the effect that: "who signed in my presence", according to the CVC, demonstrated that the petitioner unusually sought to assert that the endorsements on the 9 KVPs, which he had got transferred, were executed in his presence. Based on the assessment of the material placed before it, the CVC, came to the conclusion that this assertion ought not to have been necessary unless the petitioner carried a doubt in his mind that the issue with regard to transfer of 9 KVPs would be raised at some, later date, in point of

time.

(v) The petitioner, was present in the post office at Armapur, only for a period of 30-40 minutes, which did not justify the tour undertaken by him.

(vi) The petitioner, was negligent in getting only a sample number of 9 KVPs, worth Rs.90,000/-, transferred in respondent no.1 bank's favour as against a total number of 3500 (sic 3394) KVPs; valued at Rs.2 crores.

(vii) Had the petitioner cross-checked, with the post office record, the particulars of the KVPs, which were transferred during his visit to the post office, the loss suffered by respondent no.1 bank on account of fake KVPs and forged transfers, could have been avoided.

(viii) The petitioner, though, being an officer working at the officer grade level, that is, in the post of Assistant Manager, went about his task in non-serious and casual manner; an approach which could not be overlooked, despite, the inexperience cited by the petitioner, in credit management.

(ix) The plea taken by the petitioner that information and news about fake KVPs was in circulation and available in the banking circles, would not dilute the gravity of lapses committed by the petitioner.

9.1 Based on the aforesaid findings, the CVC came to the conclusion that the charges articulated against the petitioner in the chargesheet and in the statement of imputation of mis-conduct, stood proved.

10. Since, the petitioner, was to superannuate from service on 28.02.2002, respondent no.1 bank vide communication dated 04.02.2002, invoked the provision of Regulation 20(3)(iii) of the 1979 Regulations and, consequently, indicated to him that since disciplinary proceedings initiated against him had not been completed, they would continue in the same manner as if he was in service, until the said proceedings were concluded

and final orders were passed thereon.

10.1 The said communication, also, put the petitioner to notice that he would not receive any pay and/or allowance after 28.02.2002. More specifically, the petitioner was informed that he would not be entitled to retirement benefits until disciplinary proceedings were completed and final orders were passed. The petitioner was informed that the only monetary entitlement, that would be made available to him, was his own contribution to the provident fund.

10.2 The petitioner, was served with a copy of the findings returned by the CVC vide letter dated 19.12.2001. Though, an opportunity was given to the petitioner, to respond to the same within the stipulated time frame, the petitioner chose not to rebut the findings of the CVC.

11. Consequently, the disciplinary authority by a detailed order dated 21.07.2003, after examining the material on record, in great detail, came to the conclusion that the charges levelled against the petitioner stood proved. The disciplinary authority, therefore, proceeded to direct compulsory retirement of the petitioner w.e.f. 28.02.2002; the date of his superannuation. Furthermore, the disciplinary authority clarified that the petitioner would not be eligible for the difference of salary and subsistence allowance for the period he remained under suspension as well as increment(s), if any, and any other benefits qua the said period.

12. The petitioner's appeal suffered a similar fate. The appellate authority, dismissed the appeal by a reasoned order, which was passed on 14.01.2004, though, after recording that the petitioner was granted a personal hearing in the matter, as demanded by him. The appellate authority, concurred with the views of the disciplinary authority, inasmuch

as, it rejected the plea of the petitioner that he was charged with a duty of getting only a sample number of KVPs transferred in favour of respondent no.1 bank and not the entire lot of KVPs, numbering 3500 (sic 3394). It rejected the plea of the petitioner, that no loss was caused to the respondent no.1 bank as it was subsequently found that all KVPs, including the 9 KVPs, that the petitioner had got transferred in favour of respondent no.1 bank, were found to be fake. Other contentions with regard to the appointment of the disciplinary authority or the procedure adopted by it, being bad in law, were rejected on the ground that these were not substantiated.

13. Having regard to the aforesaid aspects, it is quite clear that the petitioner not only failed to protect the interest of respondent no.1 bank but also failed to discharge his duty with integrity, honesty, diligence and devotion, as required under Regulation 3(1) read with Regulation 24 of the 1976 Regulations.

13.1 The argument of Mr Rustagi that the petitioner was required to only obtain endorsement for transfers on KVPs, and that too sample number of KVPs, and not to ascertain their genuineness, in my view, misses the point, which is that the petitioner did not do what was required of him, as an officer employed with respondent no.1 bank.

13.2 The conduct of the petitioner has two aspects to it. First, that he was deficient in not obtaining transfer of the entire lot of KVPs entrusted to him. The fact that the petitioner obtained the transfer endorsements on only 9 KVPs, demonstrates the extent of his callousness and disregard for the interest of respondent no.1 bank. The dereliction of duty displayed by the petitioner got only amplified by the fact that the petitioner left it to one of the borrowers, who accompanied him, i.e., Mr. Dilbhajan Singh Sandhu, to

obtain the necessary endorsements on the remaining KVPs, to effect, transfer in favour of respondent no.1 bank.

13.3 The second aspect of petitioner's conduct, which has been commented upon by the disciplinary authority, relates to the cross-reference, which the petitioner ought to have carried out with the record maintained with the Armapur post office. In my view, a diligent and a responsible officer, as observed by the disciplinary authority, would have gone a step further in ensuring as to whether the particulars of the KVPs stood reflected in the records of the Armapur post office. This step would have logically come to mind of an officer who intended to perform his duties entrusted to him with due diligence. Had such a step been taken, as correctly observed by the disciplinary authority, the fraud played on respondent no.1 bank, could have got unravelled.

13.4 It can be safely said, at this point, since the criminal proceedings are still in progress, that the petitioner adopted a non-serious and a callous approach, which undermined the interest of the bank. The mandate to obtain transfer of KVPs, in my opinion, clearly obliged the petitioner to examine the record of the Armapur post office.

13.5 However, even if for the sake of argument, one were to assume that this aspect was not part of the petitioner's remit, in my opinion, the petitioner was guilty of the charge levelled against him as, he failed to secure the transfer of the entire lot of KVPs handed over to him. The fact that the petitioner left the majority of KVPs with one of the borrowers for getting the needful done, which to the knowledge of the petitioner was a collateral security offered by the borrowers for release of funds, revealed the lack of seriousness and integrity, which the petitioner brought to the job

entrusted to him.

13.6 The above aspect coupled with the fact that the authority below found that there was no material available on record to establish the plea taken by the petitioner that he was required to obtain transfer of only sample KVPs, clearly establishes the charges framed against the petitioner. In this behalf, it is pertinent to note that not only was the branch manager Ms. S. Kapoor, charged, along with the petitioner, by respondent no.1 bank, qua the same transaction, but was also not produced as a witness by the petitioner. The plea, thus set up, by the petitioner that there was some oral understanding to get a sample number of KVPs transferred in favour of respondent no.1 bank, was clearly an after-thought, and in any case not proved. Therefore, in my view, the action of Ms. S. Kapoor, the branch manager, in accepting the remaining KVPs from one of the borrowers, which were ostensibly endorsed in favour of respondent no.1 bank, would be of no help whatsoever in so far as the petitioner is concerned since, this action of the branch manager cannot absolve the petitioner of the charge levelled against him.

13.7. The argument of the petitioner that there is no finding of forgery of endorsements made on the 9 KVPs, which he had got transferred in favour of respondent no.1 bank, and thus, according to him, he was not derelict in performing his duties, is misconceived, in view of the discussion above. As indicated above, the petitioner's misconduct had two facets to it. The first one required him to get the entire lot of KVPs transferred in favour of respondent no.1 bank. The second, albeit an inter-connected facet, was to cross-reference the details of the KVPs, with the record maintained by the Armapur post office.

13.8 Had both aspects been taken care of, the forgery would have come to

fore. The petitioner's stand that neither the signatures of the sub-post master nor the seal appended on the KVPs, was found forged, misses the point that the very documents themselves, i.e., the KVPs, apparently were fake instruments. The task assigned to the petitioner required him to take care of both facets of the work assigned to him. However, as indicated above, even if it is accepted that the petitioner's reading of the communication dated 11.03.1998, which mandated him to obtain transfer of KVPs, is correct, that still would not absolve the petitioner of the charge levelled against him.

13.9 The argument of Mr Rustagi that there is no material on record to substantiate the finding that the 9 KVPs in respect of which the petitioner obtained transfer, were forged or fake, is belied by the fact that it is no one's case that respondent no.1 bank has recovered any part of the funds released to the borrowers by encashing any of the KVPs. If the 9 KVPs, which the petitioner got transferred, were not fake, surely respondent no.1 bank would have cut its losses by encashing the same. As a matter of fact, as noted above, the disciplinary authority has clearly recorded that the Armapur post office had refused to recognize the transfer of the 9 KVPs in respect of which Mr Rustagi has advanced his submissions.

14. I also tend to agree with the submissions advanced by Mr Mathur to the effect that the fact that the petitioner having failed to adhere to the mandate issued to him, would itself amount to a misconduct, even if, it is assumed for the sake of argument that, no loss was suffered by respondent no.1 bank. It is incumbent for employees, especially those who are employed with banks, to not only discharge the duties entrusted to them in accordance with the mandate issued in that behalf, but also, to conduct

themselves within the realm of the authority invested in them. In other words failure of the employee to do what he is asked to do or doing that which is not asked of him would constitute misconduct. Infraction of either kind would, therefore, in my view, result in dereliction of duty notwithstanding the fact that no actual loss is caused to its employer. This principle would hold good, especially in cases of banks, which deal with public funds. Any such act of omission or commission can have grave consequences for the employer, such as the bank, and therefore, the employer-bank in order to obviate a future eventuality, where actual loss is caused, can treat such an infraction as a misconduct and take appropriate action in accordance with the extant Rules and Regulations, though no actual financial loss is caused to it in praesenti. (See observations in *The Disciplinary Authority-Cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik* and *Suresh Pathrella Vs. Oriental Bank of Commerce*).

15. This brings me to the other submission advanced on behalf of the petitioner, which is that, the punishment, accorded to the petitioner of compulsory retirement, could not kick-in after the petitioner had reached the age of superannuation. In my view, this submission is misconceived. The reason for this is as follows: Regulation 20(3)(iii) of the 1979 Regulations, which is extracted hereinbelow for the sake of convenience, empowers respondent no.1 bank to continue with disciplinary proceedings, which have been initiated prior to the date of superannuation till such time they are concluded and a final order, is passed.

“Regulation 20 – Termination of Service

XXXX

XXXX

3. xxxx

(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions of CPF...”

15.1 Accordingly, in exercise of powers vested under Regulation 20(3)(iii), respondent no.1 bank addressed a communication dated 04.02.2002 to the petitioner, indicating therein that he will be deemed, as continuing in service, till such time disciplinary proceedings initiated against him are concluded and final orders, are passed.

15.2 Admittedly, the petitioner who was suspended from service on 01.08.1998, was served with the memo of charges on 12.10.1999; the petitioner attained the age of superannuation on 18.02.2002; and, therefore, in accordance with the extant Regulation, incorporated in the 1979 Regulations, he was, to be relieved from service on the last date of that month, i.e., on 28.02.2002. Therefore, the effective date of superannuation was 28.02.2002. Thus, the first part of the provisions of Regulation 20(3)(iii) was complied with, inasmuch as, the disciplinary proceedings stood initiated prior to the date of superannuation. The second part of the said Regulation was complied with when, in consonance with the provisions of Regulation 20(3)(iii), a communication was sent to the petitioner on 04.02.2002, indicating therein that the disciplinary proceedings will continue

beyond the petitioner's date of superannuation and for this purpose he will be deemed as being in service till conclusion of the disciplinary proceedings and the passing of the final order, in that behalf.

15.3 The argument advanced thus, that a major penalty, such as compulsory retirement, could not be inflicted on the petitioner, once the petitioner had reached the age of superannuation or that the compulsory retirement could not kick-in from the date on which the petitioner would in any event have ordinarily superannuated, is fallacious. The Regulation 20(3)(iii) takes care of this eventuality. In any event, Mr Rustagi has failed to show any extant Rule or Regulation which prohibits the triggering of a major penalty, such as, compulsory retirement on the date on which an employee would ordinarily superannuate from service in such like situation where an employee is deemed to continue in service. It is well settled that if a statutory act or rule or regulation creates a legal fiction, such fiction, would have to be given its full play. The power to impose the penalty of compulsory retirement is provided in Regulation 4(f) of the 1976 Regulations, which reads as follows:

“4. PENALTIES

Minor penalties

- (a). x x x x
- (b). x x x x
- (c). x x x x
- (d). x x x x

Major penalties

- (e). x x x x
- (f). compulsory retirement
- (g). x x x x

(h). x x x x”

16. A somewhat similar situation arose in a matter adjudicated upon by the Supreme Court in the case of ***Ramesh Chandra Sharma vs Punjab National Bank & Anr. (2007) 9 SCC 15***. In this case disciplinary proceedings were initiated against the bank employee, while he was still in service. The employee retired on superannuation, on 31.01.1997. The disciplinary proceedings continued against the employee, who was, upon conclusion of the proceedings, dismissed from service on 13.11.1997. The dismissal order, was challenged, inter alia, on the ground that it was not permissible to dismiss an employee from service who stood retired on superannuation. The bank took recourse to a pari materia Regulation, which was also, incidentally, numbered as: Regulation 20(3)(iii); albeit forming part of the Punjab National Bank Officer Employees’ (Discipline and Appeal) Regulations, 1977 (in short PNB 1977 Regulations). The said Regulation reads as follows:

“...The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The officer concerned will not receive any pay and/ or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF....”

16.1 The Supreme Court upon hearing, sustained the stand of the bank that the aforementioned Regulation created a legal fiction, which had to be given its full effect. Based on the said Regulation, it came to the conclusion that it

was permissible for the bank to continue disciplinary proceedings against the employee. The Supreme Court, disagreed with the view of the High Court, that the bank exceeded its jurisdiction in continuing with disciplinary proceedings against the employee after he had reached the age of superannuation, in view of the provisions of Regulation 20(3)(iii) of the PNB 1997 Regulations. (See observations made in paragraphs 13, 17, 18, 22 and 32 at pages 21, 22, 23, 24 and 27, respectively).

17. As regards the last submission of the learned counsel for the petitioner that respondent no.1 bank had even withheld the retiral benefits of the petitioner which were due to him upon compulsory retirement, according to me, cannot be entertained in the present petition for various reasons. First, this aspect obviously cannot form part of the impugned orders passed by the authorities below and, thus, is outside the scope of the present writ petition. Second, Mr Mathur, has at least prima facie demonstrated that all dues that were payable to the petitioner, post the punishment of compulsory retirement accorded to him, were paid to him, and those, which were retained, were retained, in exercise of powers conferred under the extant Rules and Regulations. As noticed hereinabove, the petitioner has set out a table of withheld dues in paragraph (GA) of his amended writ petition. According to the petitioner, the retiral benefits withheld were as follows: Gratuity – Rs. 3.50 lacs; Pension Commutation – Rs. 2.52 lacs; and Leave Encashment – Rs. 2.72 lacs. Mr Mathur, as noticed above, has demonstrated that the pension made available to a person who is compulsorily retired from service is governed by Regulation 33 of the 1995 Regulations, while the forfeiture of gratuity and leave encashment allowance has taken place in accordance with Rule 12 of the CBI Gratuity Fund Rules and, clause 4 of the

circular dated 31.01.2001, issued under the 1979 Regulations respectively. As a matter of fact, as indicated above, the forfeiture of gratuity took place, as far back, as on 31.01.2004.

17.1 Having regard to the above, prima facie, there is no articulation by the petitioner as to how and why the withholding of the amounts referred to above, is illegal. The respondents on the other hand have been able to demonstrate, prima facie, that the amounts have been withheld in exercise of powers conferred upon the respondent no.1 bank.

17.2 Therefore, in the present writ petition no direction can be issued to the respondents in that behalf. The petitioner will, however, be free to agitate this issue with greater clarity, if found necessary, in accordance with law, after making a suitable representation in that regard to the respondents within a period of four weeks from today. On a representation being made, the respondents shall dispose of the same by a written order.

18. For the foregoing circumstances, I find no merit in the writ petition. Consequently, the writ petition is disposed of in the aforementioned terms, leaving parties to bear their own costs.

RAJIV SHAKDHER, J.

JANUARY 03, 2014

s.pal/kk