

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

Date of Decision: November 06, 2017

+ **W.P.(C) 359/2016**

A.K. TANDON

..... Petitioner

Through: Mr. Umesh Singh, Advocate

Versus

CENTRAL BANK OF INDIA & ANR.

..... Respondents

Through: Mr.O.P. Gaggar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. Consequent upon infliction of penalty of compulsory retirement upon petitioner, respondents vide impugned order of 16th April, 2014 (*Annexure- PP*), have forfeited the gratuity payable to petitioner. Vide another order of 13th October, 2015 (*Annexure P-6*), petitioner's leave encashment also stands forfeited.

2. At the outset, learned counsel for respondents submits that the remedy available to petitioner against forfeiture of gratuity is to approach the Controlling Authority under *The Payment of Gratuity Act, 1972* and to submit so, reliance is placed upon decision of a Coordinate Bench of this Court in *Ms. Neeru Abrol Vs. Chairman & Managing Director National Fertilizers Limited & Anr* 2016 SCC OnLine Del 6335.

3. Learned counsel for petitioner submits that there is no disputed question of law in respect of gratuity payable and so, this writ petition can be entertained qua denial of gratuity.

4. Since there is an alternate and efficacious remedy available to petitioner, therefore, this Court is not inclined to entertain petitioner's prayer for grant of gratuity. Accordingly, petitioner is relegated to Controlling Authority to avail of efficacious and alternate remedy under *The Payment of Gratuity Act, 1972* for grant of gratuity.

5. So far as petitioner's prayer for leave encashment is concerned, I find that a Division Bench of this Court in *Deepak Sapra Vs. Punjab National Bank*, 2013 SCC Online 3724 has categorically held as under:-

“8. Thus, in respect of all categories of retirees, the first proviso states that such employees would be eligible to payment of leave encashment benefits. Advisedly, the regulation which was framed after prior consultation with and approval of the Central Government made no distinction between one class of retirees and another. Indeed there is no dispute about the fact that the cessation of service as a result of retirement can be on the occurrence of three contingencies-attainment of superannuation; option by the employee to voluntarily retire from the service, and the third, retirement of an employee upon imposition of a penalty or exercise by the employer upon imposition of a penalty or exercise by the employer of an option to compulsorily retire the employee on this attaining a certain age or having served for a certain number of years, in public interest. The first proviso makes no distinction between one class of retirees and another. In other words, each one of them, in terms of Regulation 38 of the 1979 Regulations is entitled to leave encashment benefit. In the case of those imposed with penalty of compulsory

retirement, there is no dispute that pension - as applicable and other terminal benefits are given. In these circumstances, to single-out one class of retirees, i.e those imposed with compulsory retirement and deny them the benefit of leave encashment would be contrary to plain intent of Regulation 38 of the 1979 Regulations. This Court is clear that the first part of the learned Single Judge's reasoning that he preferred and relied upon the bank's circular of 18.01.2001 is clearly erroneous. That circular flies in the face of the first proviso to Regulation 38 of 1979 Regulations and could not have added words as it sought to, in the present instance. Another reason which persuades us to hold as we do, i.e to say that compulsory retirees would be entitled to leave encashment benefits is that singling-out such class of employees for denial for one specific type of retirement benefit is also arbitrary and furthers no rationale, having regard to the express terms of Regulation 38 of the 1979 Regulations.”

6. Learned counsel for respondents relies upon an order of Supreme Court of 28th August, 2015 in Special Leave Petition 28315/2011, *Canara Bank & Ors. Vs. K.L. Vig*, to submit that a Special Leave Petition against decision in *Deepak Sapra (Supra)* was also a part of batch of Special Leave Petitions, where Supreme Court had not interfered with the directions issued in *Deepak Sapra (Supra)* for grant of leave encashment and had left the question of law open.

7. Be that as it may. This Court finds that in view of decision in *Deepak Sapra (Supra)*, which has been followed by another Division Bench of this Court in *R.K.Jain Vs. Punjab National Bank* 2014(3) SCT 297 (Delhi), impugned order denying benefit of leave encashment to petitioner cannot be sustained. Accordingly, impugned order of 13th

October, 2015 (*Annexure P-6*) is set aside with direction to respondents to make the payment of leave encashment to petitioner within twelve weeks.

8. With aforesaid directions, this petition is disposed of.

SUNIL GAUR
(JUDGE)

NOVEMBER 06, 2017

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