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

% *Date of Decision: 08th December, 2022*

+ W.P.(C) 904/2021

ANIL MALHOTRA

..... Petitioner

Through: Mr. R. Vasudevan, Advocate.

versus

BANK OF BARODA & ORS.

..... Respondents

Through: Ms. Parveena Guatam,
Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed by the Petitioner seeking setting aside of the decisions of the Executive Director dated 07.12.2016, Board of Directors dated 17.01.2017 and the letter dated 10.02.2017, whereby Respondents have decided to grant only 2/3rd pension to the Petitioner under Regulation 33 of the Bank of Baroda (Employees') Pension Regulations, 1995 (hereinafter referred to as 'Regulations 1995').

2. Disciplinary proceedings were initiated against the Petitioner which culminated into a penalty of 'compulsory retirement' on 27.05.2016. Petitioner requested for release of his retiral benefits towards Gratuity, Leave Encashment, commutation of pension etc. but there was no response. On 23.03.2017, the Appellate Authority rejected the appeal of the Petitioner against the penalty of compulsory retirement. On 22.01.2017, Petitioner was informed that a decision had been taken sanctioning only 2/3rd pension to the Petitioner, on account of the penalty imposed on him.

3. Several grounds have been raised in the writ petition challenging the impugned decision of the Respondents, withholding 25% of the pension of the Petitioner. However, at the outset, learned counsel for the Petitioner, on instructions, restricts the argument, at this stage, to violation of principles of natural justice, contending that no notice and/or opportunity of personal hearing was afforded to the Petitioner, prior to passing the cryptic and unreasoned impugned order.

4. Aptly encapsulated, contention on behalf of the Petitioner is that though Regulation 33 of Regulations 1995 is silent on the procedure to be followed before withholding part of the pension, however, as the provision infringes on the right of an employee to receive full pension, principles of natural justice ought to be read into Regulation 33 and the affected employee must be informed of the reason for which the Competent Authority proposes to withhold the pension and before taking any such decision, a fair hearing must be given to the employee concerned. In the present case, there is a clear breach of the principles of natural justice, as neither a notice was given to the Petitioner nor was he given an opportunity of hearing. It is possible that Petitioner may have succeeded in persuading the Respondents to withhold lesser percentage of pension as Regulation 33 gives power to withhold maximum 25% of pension but in a given case, it can be lesser. In support, reliance is placed on the judgment of the High Court of Gujarat in *A.N. Puniwala v. Bank of India and Ors., 2007 SCC OnLine Guj 367*.

5. Learned counsel for the Respondents, on the other hand, opposes the contention raised by the Petitioner, firstly, on the ground that the writ petition is barred by delay and laches since the impugned order was passed in the year 2017 and in support, relies on the

judgment of the Supreme Court in ***Chairman/Managing Director, U.P. Power Corporation Ltd. and Others v. Ram Gopal, 2020 SCC OnLine SC 101***, more particularly, para 16 thereof, wherein it was held that though limitation does not strictly apply to proceedings under Articles 32 and Article 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Relevant para is as follows:-

“16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated, alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balau v. State of Kerala, this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.””

6. It is further contended that the decision of reducing the pension of the Petitioner from full to 2/3rd was taken by the Board on 17.01.2017, ratifying the recommendations of the Competent Authority, on award of punishment of compulsory retirement and looking into the gravity of the misconduct as well as the likely financial loss to the Bank. In any case, there is no provision in the Pension Regulations, 1995 for affording any hearing or issuance of a notice as this is really the prerogative of the Competent Authority.

7. I have heard learned counsels for the parties and examined the rival submissions.

8. Insofar as the objection of delay and laches is concerned, indisputably, the present writ petition lays a challenge to reduction in pensionary benefits of the Petitioner. In several judgments, the Supreme Court has affirmed and reaffirmed that liberal approach must be taken while examining delay and laches in cases of continuing wrong, particularly, in the context of retiral benefits. In order to avoid prolixity, I may only refer to the judgment of the Supreme Court in ***Union of India and Others vs. Tarsem Singh, (2008) 8 SCC 648***, relevant para of which is as follows:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

9. As far as the argument of the Petitioner that no notice/opportunity of hearing was given to the Petitioner before taking the impugned decision, I find that the case of the Petitioner is covered in all four corners by the judgment of the High Court of Gujarat in ***A.N. Puniwala (supra)***, relevant paras of which are as follows:-

“9. Now, considering Regulation 33, it give's authority to the competent authority to withhold pension upto 25% and thus, discretion is vested with the authority to pay pension at a rate not less than two thirds and not more than full pension meaning thereby, the authority can withhold the pension upto 25%. Thus, in an appropriate case, the authority can withhold pension upto 5%, in an appropriate case upto 10%, in an appropriate case upto 20% and maximum upto 25%. When the discretion is given to the authority, in that case: if the opportunity of being heard is given to the concerned employee, in that case, the concerned employee can satisfy the authority that in a given case order of withholding of the pension of 25% is not warranted and that only 5% of the pension may be withheld and/or less than 25% of the pension may be withheld. There is another reason also why in such a situation hearing is required to be given. When the discretion is given see that such discretion is not exercised arbitrarily and is exercised judiciously, the fair play requires that an opportunity of hearing is required to be given.

10. In case of Mangilal, ((2004) 2 SCC 447 : AIR 2004 SC 1280) (supra), the Hon'ble Supreme Court in paragraph 10 has observed as under:— “10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear, mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadeshi Cotton Mills v. Union of India, ((1981) 1 SCC 664 : AIR 1981 SC 818)) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are; notice of the case to be met, and opportunity to explain”.

11. *In case of Dr. Rash Lal Yadav v. State of Bihar reported in (1994) 5 SCC 267 : (1994 AIR SCW 3329), the Hon'ble Supreme Court has observed that where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. It is observed that Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision making.*

12. *In case of Suresh Chandra Nanhorya v. Rajendra Rajak reported in (2006) 7 SCC 800, the Hon'ble Supreme Court has observed that natural justice is inseparable ingredient of fairness and reasonableness. It is observed that it is even said that the principles of natural justice must be read into unoccupied interstices of statute, unless there is a clear mandate to the contrary. It is also further observed by the Hon'ble Supreme Court that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Now, considering the facts of the case on hand and the relevant Regulation 33 of the Pension Rules under which 25% of the pension of the petitioners has been withheld and considering the fact that it confers discretion upon the authority to withhold pension upto 25% and withholding of the pension can be said to be a civil consequence, the principles of natural justice must be read into the said regulation. If the opportunity would have been given to the respective petitioners before withholding of 25% of the pension, in that case, considering the discretion of the authority to withhold the pension upto 25%, the concerned employee could have represented to the authority and satisfied the authority that it is not a case where maximum 25% of the pension is required' to be withheld. Thus, in view of the fact that discretion is vested with the authority to withhold pension upto 25% fair play required and that the authority exercises the jurisdiction judiciously the principle of natural justice must be read into the said regulation. Under the circumstances, as the action of the respondents in withholding 25% of the pension is without giving an opportunity to the petitioners, the same is in breach of principles of natural justice and requires to be quashed and set aside. The contention on behalf of the respondent bank is that at the time of imposing penalty of compulsory retirement at every stage, opportunity was given and withholding of 25% of the pension is consequential action of compulsory retirement no further opportunity is required to be given is concerned, it is required to be noted that as such both the actions are independent and under different Rules/Regulations. One is under the Discipline and Appeal Rules and another is under the Pension Rules, 1995. Even it is the case on behalf of the respondent bank in the affidavit in reply, as stated above that it is not incumbent upon the competent authority under the Pension Rules to consider the observation and/or the*

order of the appellate authority, as both are under different regulations. It is also required to be noted at this stage that it is an admitted position that no notice has been served upon the respective petitioners calling upon them to show cause as to why pension upto 25% should not be withheld. Under the circumstance, the contention on behalf of the respondent bank that as while imposing the penalty of compulsory retirement opportunity was given and withholding of the pension upto 25% is consequential action and therefore, hearing is not required, cannot be accepted. Even the contention on behalf of the respondent bank that withholding of 25% of the pension is a part of the disciplinary proceedings also cannot be accepted as the order of compulsory retirement is passed under the provisions of the Discipline and Appeal Rules and the order of withholding of 25% of the pension is passed under the Pension Rules. Under the circumstances, the impugned action of the respondents in withholding of 25% of the pension is required to be quashed and set aside as it is in breach of principles of natural justice. For the reasons stated above, all the petitions succeed and the impugned action of the respondents in withholding of 25% of the pension on passing the order of compulsory retirement are hereby quashed and set aside. It goes without saying that as the impugned actions are set aside only on the ground that they are in breach of principles of natural justice it is always open for the respondent bank to pass an appropriate order in accordance with law and on merits after giving an opportunity to the respective petitioners. Rule is made absolute to the aforesaid extent in each of the petition, however, there shall be no order as to costs.”

10. It is a common ground between the parties that Regulation 33 is a common thread in the case of **A.N. Puniwala (supra)** and the present case. In the said judgment, Court has held that ‘natural justice’ is an inseparable ingredient of fairness and reasonableness and by their application, one can prevent miscarriage of justice. It is observed by the Court that even if it is the stand of the Respondent Bank that it is not incumbent upon the Competent Authority under the Pension Regulations to grant an opportunity of hearing, since there is no provision mandating so, principles of natural justice would have to be read into the Regulations and the concerned employee must be put to notice enabling him to represent in a given case that it is not a case where maximum 25% of the pension is required to be withheld.

11. The observations in the aforesaid judgment persuade this Court to hold that Respondents ought to have afforded an opportunity of hearing to the Petitioner, in light of the fact that Regulation 33 does not mandate withholding 25% pension as a thumb rule and this is the maximum permissible reduction. Therefore, in a given case, an employee may be able to make out a case of lesser reduction.

12. Accordingly, Petitioner is permitted to make a comprehensive representation to the Respondents against the impugned decision, within a period of four weeks from today. Upon receipt of the representation, Respondents shall give an opportunity of hearing to the Petitioner and take a decision thereafter, in accordance with law.

13. It is made clear that this Court has not expressed any opinion on the merits of the case and it is open to the Respondents to take a decision and pass a reasoned and speaking order, which shall be communicated to the Petitioner forthwith.

14. In case of any surviving grievance of the Petitioner, he is at liberty to take recourse to appropriate remedies available in law.

15. The impugned orders are quashed and set aside on this short ground and writ petition is allowed and disposed of.

JYOTI SINGH, J

DECEMBER 08, 2022/rk/shivam