

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE ALOK KUMAR VERMA

12TH MAY, 2023

WRIT PETITION (S/B) No. 479 OF 2017

Between:

Haresh Chandra Agrawal.

...Petitioner

and

Central Bank of India and others.

...Respondents

Counsel for the petitioner. : Mr. Ajay Veer Pundir, learned counsel.

Counsel for the respondents. : Mr. Arvind Vashistha, learned Senior
Counsel assisted by Ms. Monika Pant,
learned counsel

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

The petitioner has preferred the present Writ

Petition to seek the following reliefs :-

- "I. Issue a writ, order or direction in the nature of certiorari quashing the order dated 17/08/2007 issued by the Disciplinary Authority, order dated 24/10/2008 passed by the Appellate Authority and order dated 30-06-2017 passed by the Reviewing Authority (Annexure No. 1, 2 and 3 to the Writ Petition).*
- II. Issue a writ, order or direction in nature of mandamus commanding the Respondents to grant and pay all consequential benefits including entire back wages, allowances, all retirement dues and other service benefits admissible to the Petitioner along with interest at the rate of twelve per cent per annum.*
- III. Issue a writ, order or direction in nature of mandamus commanding the Respondent No. 1*

to reconsider the Petitioner's option for pension submitted on 12/09/2010 in terms of the Bank's circular No. 316 dated 1st September, 2010 and to pay due pension to the Petitioner with effect from 01/10/2009. i.e., the date of his attaining the age of superannuation.

- IV. Issue a writ, order or direction in the nature of mandamus commanding the Respondents to pay interest on the Provident Fund amount of the Petitioner for the period between 20/08/2007 and 01/10/2009 (i.e., up to the date of actual payment).*
- V. Issue other writ, order or direction as may deem fit and proper in the circumstances of the case.*
- VI. Award cost of the writ petition."*

2. The facts, in brief, leading to the filing of the present Writ Petition, are that the petitioner was appointed in the respondent-Central Bank of India on 28.04.1971 as Clerk-cum-Typist. From time to time, he earned promotions, and attained the rank of Senior Manager (in Middle Management Grade Scale-III). He was also a member of the Central Bank Officers' Association, Agra Zone, which was a registered Trade Union, and recognized by the Central Bank of India. On 26.05.2006, while serving at the Civil Lines, Agra Branch of the respondent-Bank, he was transferred to Agra Cantt. Branch in the position of Senior Manager. He reported for duty at Agra Cantt. Branch on 25.09.2006. The petitioner was sought to be transferred from Agra Cantt. Branch to Dehradun Branch vide letter dated

14.10.2006. The petitioner was aggrieved by the said transfer on the ground that he was the office bearer of the registered Trade Union, and he was a protected employee. He claimed that he could not be transferred, and placed reliance in this regard on the Circular dated 01.01.1997, governing transfer of officers. Clause 2.3 of the said Circular provided:

“2.3- Officers having left over service of 2 years or less prior to superannuation and the principal office bearers of AICBOF and AICBOA i.e. President, General Secretary, Treasurer of All India Body and/or the Zonal/State units and Regional Secretaries, may be retained in the same station but they shall be posted to a different branch/office wherever applicable.”

3. The petitioner went on leave, and being aggrieved by his transfer vide order dated 14.10.2006, from Agra Cantt. Branch to Dehradun Branch, the petitioner preferred a Writ Petition, being Writ Petition No. 61254/2006, before the Allahabad High Court to assail the same. On 09.11.2006, the Allahabad High Court directed maintenance of *status quo* in regard to the petitioner's transfer. The said order reads as follows:-

“Short counter affidavit and supplementary affidavit filed today may be taken on record.

As prayed, 3 weeks time allowed for filing a detailed counter affidavit and 3 weeks thereafter for rejoinder affidavit. List for admission immediately thereafter.

Till the next date of listing parties shall maintain status quo as on today.”

4. The petitioner states that, in pursuance of the Interim Order granted by the Allahabad High Court, he resumed his duties at the Agra Cantt. Branch on 10.11.2006. He states that the Chief Manager of the Agra Cantt. Branch acknowledged his letter, and the certified copy of the order passed by the Allahabad High Court dated 09.11.2006, and permitted him to discharge his duties. It appears that, on the same day, i.e. 10.11.2006, subsequently, the Assistant General Manager of the Zonal Office intervened, and did not permit the petitioner to discharge his duties at the Agra Cantt. Branch. The petitioner states that, in compliance of the Bank's instructions, he stopped working and left the Agra Cantt. Branch. The stand of the respondents was that the petitioner had already been relieved on 07.11.2006, when the petitioner was on leave, so that he could join at Dehradun.

5. As a consequence of the petitioner being permitted to join his duties at the Agra Cantt. Branch, the Chief Manager – Shri R.R. Mishra, was suspended on 11.11.2006, on the ground that he failed to perform his duties. The petitioner was also placed on suspension vide order dated 13.11.2006, on the ground that he had

unauthorizedly entered the Agra Cantt. Branch on 10.11.2006, and forcibly marked his presence, and performed functions as Senior Manager. The respondent-Bank also suspended a couple of other officers, on the ground that they had facilitated the entry of the petitioner in Agra Cantt. Branch on 10.11.2006.

6. The petitioner further states that a settlement was reached between the Union Forum of Central Bank Unions, and the Management of the respondent-Bank on 20.02.2007, relating to the suspension of the petitioner, and other officers, who had been suspended due to the petitioner being permitted to join his duties at the Agra Cantt. Branch on 10.11.2006. Under the said agreement, the respondent-Bank agreed to lift the suspension of the petitioner, on the condition that he should report at the place of posting, i.e. Dehradun. Clause 15(e) of the said agreement has been reproduced by the petitioner in paragraph no. 19 of the Writ Petition, which reads as follows :-

"As regards Mr. H.C. Agarwal, the suspension will be lifted, but he has to report at the place of posting. On making an appeal thereafter, the matter will be re-examined. However, DA will continue. On reporting of Mr. H.C. Agarwal at the place of posting, the related suspensions of other officers will be lifted and DA will continue."

7. The petitioner states that he joined his duties at the Dehradun Branch on 24.03.2007, and he continued to serve there till the date of his dismissal on 20.08.2007. The petitioner further states that several other officers, against whom disciplinary actions were taken on account of the aforesaid incident, were either imposed minor penalty, or were eventually exonerated. The petitioner has given a list of 12 such officers in paragraph no. 21 of the Writ Petition.

8. The petitioner was issued a charge-sheet on 27.11.2006, containing the following charges :-

- “(i) The services of Shri Agarwal were transferred to Dehradun branch and accordingly he stood relieved from the Branch on 07/11/2006 but he failed to join his new place of posting i.e. Dehradun.*
- (ii) Despite the fact that he was relieved from Agra Cantt. branch on 07.11.2006, Shri Agarwal along with some staff members who owe allegiance to his Association, entered Agra Cantt. branch at about 8.00 a.m. and put pressure on the Branch management to allow his rejoining there at. He unauthorizedly took the attendance Register of the branch and marked his attendance therein.*
- (iii) On 10/11/2006 Shri Agarwal, with a malafide intention and just to create record of his presence in Agra Cantt. Branch passed/sanctioned the petrol reimbursement claim of Shri R B Lal, Asstt Manager dated 01.11.2006 for Rs. 2265.75.*
- (v) He unauthorisedly carried out Day-begin activity of the Agra Cantt. branch on 10/11/2006 at 08:03:36 hrs in place of first shift In charge.*
- (v) He unauthorizedly passed the News Papers Bills submitted by staff concerned on 10/11/2006.*

- (vi) *He unauthorizedly issued Office Orders on 10/11/2006 to Shri R C Sharma, Asstt. Manager and Shri K P Lavania, Manager for the day.*
- (vii) *On 25/10/2006, Shri Agarwal unauthorizedly entered the premises of Agra Cantt. Branch and unauthorizedly modified the file titled "Awadhesh Upadhyay".*
- (viii) *On 01/11/2006 Shri Agarwal was supposed to be on leave on the grounds of sickness, led a deputation to Zonal Manager, Zonal Office, Agra on the same day and thereby made a false claim of sickness.*
- (ix) *Shri Agarwal unauthorizedly procured the Bank's communication bearing No. ZO/HRD/2006-07/201 dated 14/10/2006 and enclosed it with the Writ Petition filed by him in the Hon'ble High Court Allahabad."*

9. The aforesaid would show that the central charge against the petitioner was that, despite being relieved from Agra Cantt. Branch on 07.11.2006, the petitioner had entered the Agra Cantt. Branch on 10.11.2006, and had given his re-joining in the post of Senior Manager, with a view to create record. It was alleged that the petitioner had unauthorizedly entered the said Branch, and discharged official duties at the Agra Cantt. Branch, without authority.

10. A Departmental Inquiry was held for imposition of major penalty against the petitioner. The Inquiry Officer found the petitioner guilty of all the charges, except Charge No. VII. The petitioner was again given an opportunity to represent in respect of the

Inquiry Report, whereafter, the Disciplinary Authority subjected the petitioner to the penalty of dismissal from service, which would be a disqualification for future employment. It was further directed that the petitioner will not get any monetary/ other benefits during his suspension period. The petitioner, then, preferred a statutory remedy under the applicable Rules, which, too, was rejected by the Appellate Authority, i.e. the Chief Manager, Zonal Office, New Delhi, vide order dated 24.10.2008.

11. The petitioner invoked Regulation 18 of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulation, 1976, which provides for a limited review. Since that review was not decided and kept pending, the petitioner approached this Court by preferring Writ Petition (S/B) No. 94 of 2014. It was informed to the Court that the petitioner's review against the order passed by the Appellate Authority is still pending. In the light of the aforesaid, this Court passed the order dated 07.06.2017, disposing of the Writ Petition as follows :-

"WPSB No. 94 of 2014

Hon'ble Rajiv Sharma, J.

Hon'ble Sharad Kumar Sharma, J.

Mr. Alok, Mahra, Advocate for the petitioner.

Mr. Arvind Vashistha, Senior Advocate assisted by Ms. Monika Pant, Advocate for the respondent nos.2 to 4.

Mr. Mahesh C. Pant, Advocate for the respondent no.5.

Heard.

Petitioner has already preferred a review application against the order passed by the Appellate Authority.

In view of the above, we dispose of the present petition directing the Appellate Authority to decide the review application, strictly in accordance with law, within a period of four weeks from today.

Pending application, if any, also stands disposed of.

**(Sharad Kumar Sharma, J.) (Rajiv Sharma, J.)
07.06.2017**

12. The review preferred by the petitioner was also dismissed, vide order dated 30.06.2017. Consequently, the petitioner has preferred the present Writ Petition.

13. The submission of Mr. Pundir, learned counsel for the petitioner is that the petitioner had proceeded on leave, upon issuance of his transfer order from Agra Cantt. Branch to Dehradun Branch, since he wished to avail of his legal remedy. The petitioner believed that he could not be transferred in the light of the fact that he was a protected employee, being a member of the registered Trade Union, and in the light of the Circular issued by the respondent-Bank on 01.01.1997, which was amended on 02.06.1997. The petitioner, without any delay, preferred his Writ Petition before the

Allahabad High Court, and the Allahabad High Court, *prima facie*, saw merit in the petitioner's case, and passed an order directing maintenance of *status quo*. It is only after the passing of the said order, that the petitioner sought to resume his duties as the Senior Manager at the Agra Cantt. Branch. Mr. Pundir submits that the petitioner was even permitted to rejoin duties by his superior. If the stand of the respondent-Bank was that the petitioner stood relieved on 07.11.2006, there was no reason for the superior officer permitting the petitioner to re-join his duties, and perform his functions as the Senior Manager. Mr. Pundir submits that no other officer had taken over the charge of Senior Manager on 10.11.2006, when the petitioner resumed his duties.

14. Mr. Pundir further submits that there is no allegation involving moral turpitude against the petitioner. In these circumstances, the action of the respondent-Bank, in dismissing the petitioner from service, is vindictive, and the punishment imposed upon the petitioner is clearly disproportionate. He submits that the dismissal of the petitioner has had the effect of nullifying about 35 years of blemishless service of the petitioner in the respondent-Bank, since the petitioner

had initially joined his duties as a Clerk-cum-Typist on 28.04.1971.

15. Mr. Pundir also points out that the order dated 09.11.2006, granting *status quo*, was passed by the Allahabad High Court after receiving the short counter affidavit, and supplementary affidavit of the respondents. He submits that the stand of the respondent-Bank before the Allahabad High Court, when the matter was taken up on 09.11.2006, was not that the petitioner already stood relieved from Agra Cantt. Branch. If such a statement were to be made before the Court by the respondent-Bank, the Court would not have proceeded to pass the order of *status quo*, as on that date.

16. On the other hand, Mr. Arvind Vashistha, learned Senior Counsel for the respondent-Bank, firstly, submits that the present Writ Petition is not maintainable in the light of the dismissal of the earlier Writ Petition (S/B) No. 94 of 2014 on 07.06.2017 by this Court. He submits that, in the said Writ Petition, the petitioner had assailed the punishment order passed by the Disciplinary Authority, as well as the order dismissing his departmental appeal. He submits that the

petitioner was not granted any liberty to once again challenge the said orders in another Writ Petition. He submits that the only order, which the petitioner could assail, was the order in Review. He submits that the scope of review under Regulation 18 is very limited.

17. In support of his aforesaid submission, Mr. Vashistha has sought to place reliance on the judgment of the Supreme Court in ***M.N. Haider and others v. Kendriya Vidyalaya Sangathan and others, (2004) 13 SCC 677.***

18. We have considered the said primary objection of Mr. Vashistha, and we do not find any merit in the same. A perusal of the order dated 07.06.2017, passed in Writ Petition (S/B) No. 94 of 2014, shows that the Court took note of the fact that the petitioner had preferred a Review Application against the order passed by the Appellate Authority. In that view of the matter, the Writ Petition was disposed of, directing that the Review Application be decided in accordance with law within four weeks. The Court did not go into the merits of the petitioner's case *qua* the order of punishment passed by the Disciplinary Authority, or *qua* the appellate order dismissing the petitioner's departmental

appeal. It is evident that the Court did not go into the correctness of either of these orders, since a statutory remedy, which had already been availed of, was still pending consideration. It is obvious to us that the Court did not consider it proper to spend time on the matter, since the decision in the Review Application, in favour of the petitioner, would have rendered the challenge to the penalty order of the Disciplinary Authority, as well as the Appellate order, academic.

19. Reliance placed on ***M.N. Haider*** (supra) is also misplaced. The facts of that case are starkly different. That was a case where the Special Leave Petition preferred against the order dated 31.05.2002 had been filed, and was dismissed. After the dismissal of the Special Leave Petition, the petitioner had sought review of the order dated 31.05.2002 before the High Court. The High Court dismissed the Review Petition on 18.12.2003. The petitioner had again approached the Supreme Court to assail, not only the order passed in the Review Petition, but also the initial order dated 31.05.2002, against which the Special Leave Petition had already been dismissed. It is in this background that the Supreme Court held that it was not open to the petitioner to again assail the order dated 31.05.2002.

In the present case, while passing the order dated 07.06.2017 in Writ Petition (S/B) No. 94 of 2014, this Court had not dismissed the petitioner's Writ Petition on merits *qua* the order passed by the Disciplinary Authority, or the order passed by the Appellate Authority. In fact the Court has not gone into the merits of the case at all, since the petitioner had already availed of a statutory remedy, which was still pending consideration.

20. On merits, Mr. Vashistha submits that the scope of interference by this Court in such matters is extremely narrow. The Inquiry Officer; the Disciplinary Authority; the Appellate Authority, and; the Reviewing Authority have all found the petitioner guilty of misconduct, as alleged against him, and it is not for this Court to enter into the merits of those findings. He further submits that the penalty imposed upon the petitioner cannot be classified as disproportionate.

21. We have considered the submissions of Mr. Pundir and Mr. Vashistha.

22. The petitioner was aggrieved by his transfer from Agra Cantt Branch to Dehradun Branch, on the ground that he was a protected employee. He relied

upon the Circular issued by the Bank on 01.01.1997, as amended on 02.06.1997. Relevant extract thereof, we have reproduced hereinabove. Therefore, it appears that the petitioner had a bonafide grievance, which he agitated before the Allahabad High Court before accepting the relieving order. He availed of the leave, which he was entitled to, and did not accept the relieving order till the date the matter was taken up by the Allahabad High Court in the petitioner's Writ Petition on 09.11.2006. On 09.11.2006, the Court directed that till the next date of listing the parties shall maintain *status quo* as on today. The petitioner interpreted the position "as on today", as him not having been relieved.

23. On the other hand, the respondent-Bank treated the petitioner as having been relieved on 07.11.2006, while he was on leave.

24. The petitioner, thereafter, proceeded to re-join his services at the Agra Cantt. Branch on 10.11.2006. The petitioner was permitted to re-join his services by the Chief Manager, Agra Cantt. Branch. The respondent-Bank, even at that stage, did not claim that the petitioner had already been relieved from his services. The Chief Manager could have turned back the

petitioner by informing him that he has already been relieved. However, that was not done, and he was granted entry into the Bank Branch, and allowed to function as the Senior Manager.

25. In the light of the aforesaid, even if one were to accept that the petitioner acted too clever by half by going on leave with a view to evade the transfer, after he learnt of the same; approaching the Allahabad High Court by filing the Writ Petition, and; reporting only after he had obtained interim order from the Allahabad High Court, in our view, that did not tantamount to such a grave misconduct as to merit the ultimate punishment of dismissal from service. The petitioner had a blemishless service record before the aforesaid incident. He had served the respondent-Bank for about 35 years. His dismissal from service had the effect of nullifying his services rendered to the respondent-Bank for 35 years, leaving him high and dry at the fag end of his career, with no cover of retiral dues. The punishment imposed by the respondent-Bank was clearly disproportionate, assuming that he was liable to be punished for his conduct.

26. Compulsory retirement is also a major penalty under the Conduct Rules, and looking to the past blemishless service record of the petitioner, the Disciplinary Authority, the Appellate Authority, and the Reviewing Authority could have subjected the petitioner to the said penalty, as that would have led to cessation of the relationship between the petitioner and the respondent-Bank on the one hand, and yet not denied to the petitioner his retiral dues for his 35 long years blemishless service. It is well settled that pension is not a bounty, it is payment for past services rendered. Pertinently, on account of the aforesaid incident, the respondent-Bank proceeded to initiate disciplinary action against large number of officers. This itself shows that the management of the respondent-Bank took action against the petitioner, not only on account of so called misconduct, but in a vindictive manner.

27. In the aforesaid light, we are of the view that the impugned orders suffer from the vice of disproportionality, and cannot be sustained. Accordingly, we quash the order of penalty passed by the Disciplinary Authority; the appellate order passed by the Appellate Authority, and; the order in review passed by the Reviewing Authority, insofar as, they inflict the

punishment of dismissal from service upon the petitioner.

28. At this stage, we have two options available before us – either we can remand the matter back to the respondent-Bank for reconsideration of the penalty to be imposed upon the petitioner, or we can ourselves substitute the penalty of dismissal from service. In the normal course, we would have adopted the first of the two options. However, considering the long period of time, which has gone by, since the petitioner was dismissed from service in the year 2007, and also the fact that the allegations against the petitioner did not involve any moral turpitude, we are inclined to adopt the second option, and to substitute the penalty imposed upon the petitioner ourselves.

29. As we have already observed, compulsory retirement is also a major penalty, and infliction of the same would safeguard the interests of the petitioner, as also the respondent-Bank. It would neither deny the petitioner his retiral dues for his hard earned services, nor interfere with the discipline that the respondent-Bank is entitled to maintain and enforce in its bank.

30. We, therefore, substitute the major penalty imposed upon the petitioner from that of “dismissal from service” to that of “compulsory retirement” , which shall take effect from the date on which the order of penalty was passed by the Disciplinary Authority on 17.08.2007.

31. Consequently, the petitioner would be entitled to his retiral dues. The respondent-Bank is directed to process the case of the petitioner for release of the amounts that are due to him in the aforesaid light. The arrears should be released positively within four weeks, and payments, which fall due hereafter, should be punctually made.

32. The Writ Petition stands disposed of in the aforesaid terms.

33. Consequently, pending applications, if any, also stand disposed of accordingly.

VIPIN SANGHI, C.J.

ALOK KUMAR VERMA, J.

Dt: 12th May, 2023
Rahul