IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.6460 of 1995 & 12890 of 2003

C.R.L.Narasimhan ...Petitioner in both the writ petitions

-vs-

1. State Bank of India rep.by its
   Managing Director (Personnel)
   Madame Cama Road
   Bombay-23

2. Chief General Manager
   State Bank of India
   Ahmedabad Local Head Office
   Bhadra
   Ahmedabad

3. Commissioner of Domestic Enquiry
   Central Vigilance Commission
   Government of India, Block No.10
   Akbar Road
   New Delhi-1 ...Respondents in W.P.No.6460 of 1995

1. State Bank of India rep.by its
   Managing Director (Personnel)
   Madame Cama Road
   Mumbai-21

2. Reviewing Authority
   (Central Office Human Resources Committee)
   State Bank of India
   Central Office
   Madame Cama Road
   Mumbai-21

3. Appellate Authority
State Bank of India
Central Office
Madame Cama Road
Mumbai-21

4. The Commissioner for Departmental Enquiry
Government of India
Central Vigilance Commission
Satarkta Bhavan I.N.A.,
New Delhi-23 ...Respondents in W.P.No.12890 of 2003

W.P.No.6460 of 1995 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to petitioner's service in the bank and quash the disciplinary proceedings issued by the second respondent in letter No.DPO/813 dated 7.2.94 and further direct the first and second respondents to release and pay the petitioner the provident fund, gratuity, pension and arrears due from 1.12.93 onwards with interest at 15% per annum.

W.P.No.12890 of 2003 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the disciplinary proceedings against the petitioner and quash the order of the second respondent therein dated 22.1.2003 passed in terms of Rule 69(3) of the State Bank Officers' Service Rules and further forbearing the respondents from taking any further proceedings pursuant to the aforesaid order of the second respondent.

For Petitioner in both WPs : Mr.N.G.R.Prasad for M/s Row & Reddy

For Respondents in both WPs : Mr.S.Ravindran

ORDER

Mr.C.R.L.Narasimman had filed two writ petitions. The first writ petition in W.P.No.6460 of 1995 is for issuance of a writ of certiorarified mandamus to call for the records of the respondent-State Bank of India and quash the disciplinary proceedings issued by the second respondent in letter No.DPO/813 dated 7.2.94 with a further direction to the first and second respondents to release and pay the petitioner his provident fund, gratuity, pension arrears due from 1.10.93 onwards with interest at 15% per annum. The second writ petition in W.P.No.12890 of 2003 is also for issuance of a writ of certiorarified mandamus to call for the records of the respondents relating to the disciplinary proceedings initiated against him by the second respondent and quash the disciplinary proceedings dated 22.1.2003 in terms of Rule 69(3) of the State Bank Officers Service Rules and further forbear the respondents from taking any proceedings pursuant to the above order of the second respondent.

2. Mr.N.G.R.Prasad, learned counsel for the petitioner in both the cases submitted that the petitioner had an excellent academic career by securing a distinction in post graduation viz., M.A. (Economics), as a result, he succeeded in the competitive examination held by the respondent Bank for recruitment of probationary officers and he was selected as a probationary officer in the year 1969 and allotted to Madras circle. After joining in early 1970, he had put in a meritorious service in various capacities in Madras circle, central office merchant banking division. Pursuant thereto, he was deputed to Tokyo and Singapore offices of the bank. Later on he was appointed as a teaching faculty in the State Bank of India Staff College at Gurgaon, from where he was transferred to Madras local head office in August, 1988. Then again he was deputed to SBI Capital Markets Limited (SBICAP), being a subsidiary of the first respondent bank and posted at the Madras regional office branch from September, 1988, as Chief Manager. While serving in the SBI CAP, Madras, he was promoted as Assistant General Manager. While discharging his duties with utmost devotion and integrity to the satisfaction of his superiors, he had earned several appreciations for his exceptionally commendable work in executing various assignments. After terminating his deputation to SBI CAP in June, 1992, he was transferred to the Ahmedabad local head office to function as Chief Instructor in the first respondent training centre at Baroda. Even at the time of his transfer to Ahmedabad, he made oral representations expressing his inability to serve outside Madras due to certain domestic and family exigencies, as he is the only son to his mother, who was aged about 81 years then, living at Madras depending upon him for her day to day assistance. Apart from family circumstances, since there was no scope in the first respondent organization for full exploitation of his expertise and he also received an offer as senior editor in Madras in the prestigious English daily ''The Hindu'', the petitioner preferred to retire from service from the first respondent Bank, hence, in terms of the third proviso to Rule 19(1) of the State Bank of India Officers' Service Rules, 1992, having completed 20 years of pensionable service, in the light of the fourth proviso to Rule 19 (1), on 10.3.93, the petitioner gave three months notice to treat him

as retired with effect from 10.6.93. The above notice was submitted to the Deputy Managing Director (Personnel), who has been designated as the competent authority. Although he did not receive anything from the competent authority directly, a letter dated 4.5.93 was received by him informing that in view of certain lapses alleged to have been committed by him in securities transactions while on deputation to SBI CAP, Madras, the competent authority declined to accept his request for voluntary retirement till a final view is taken in the matter. Therefore, the petitioner continued as Chief Instructor of SBI Training Centre with the fond hope that true to his words, the competent authority would give a final verdict on his request for voluntary retirement. In the meanwhile, family circumstances made his stay at Baroda impossible. Therefore, the petitioner was constrained to send a reminder on 24.10.93. Again finding no response for four months, the petitioner sent another letter of voluntary retirement on 22.11.93 in terms of the fourth proviso to Rule 19(1) by enclosing a cheque for three months pay in lieu of notice conveying his decision of having voluntarily retiring from service from the first respondent with effect from 1.12.93. He had also handed over his charge to H.K.Dave, who was the senior most faculty member and General Manager (Planning), Ahmedabad. on 30.11.93.

3. Adding further, Mr.N.G.R.Prasad submitted that when the fourth proviso to Rule 19(1) clearly says that an officer who has completed 20 years service may be permitted by the competent authority to retire from the bank's service, subject to his giving three months notice in writing or pay in lieu thereof, inasmuch as this requirement is wholly or partly waived by it, the petitioner has got a vested right to retire from the services of the bank by giving three months notice in writing or pay in lieu thereof to the competent authority. When the said notice was not directly responded to by the competent authority, namely, Deputy Managing Director (Personnel), it shows that the petitioner is deemed to have retired on the expiry of three months time. Further he has argued that the refusal on the part of the competent authority to accept his voluntary retirement is arbitrary and against the rules, because, when the petitioner was informed by the reply dated 4.5.93 that till a final decision is taken in the matter, the competent authority has declined to accept his request for voluntary retirement, again he continued to serve the bank with the fond hope that he would be shortly relieved from duty. Although the notice period referred to earlier was already over with a request to relieve him from duty from 30.11.93, making clearly therein that under Rule 20(2) no disciplinary proceedings and no show cause notice are pending against him, the same would clearly show that his retirement proposal cannot

remain unacceptable. When none of the conditions mentioned in the said sub rule are present in his case, the respondents were duty bound to accept his voluntary retirement proposal. That was also not done. In support of his submissions, he has also relied upon an order passed by me in W.P.No.34253 of 2006 dated 17.8.2010 (Dr.V.Sankaran v. The Secretary to Government, Health and Family Welfare Department and others) for the proposition that if the appointing authority shall not issue any order before the date of expiry of notice either accepting voluntary retirement or not, the Government servant shall be deemed to have retired voluntarily from service at the end of the period of notice. Adding further, he has stated that it is settled law, where the appointing authority does not refuse permission for voluntary retirement before the expiry of the period specified in the sub rule 19(1), the retirement shall become effective from the date of expiry of the said period. Inasmuch as no order of refusal has been passed by the competent authority within the notice period, the voluntary retirement would take effect automatically. Therefore, when the petitioner on the expiry of the notice period is deemed to have been retired from service, the question of initiating departmental proceedings on the ground that he absented from duty from 10.6.93 is without jurisdiction. Therefore, the impugned charge memo issued against him is liable to be set aside and a consequential direction should be given to pay all his pensionary benefits with interest with effect from 10.6.93.

4. Again taking support from the judgment of the Apex Court in the case of G.M.Tank v. State of Gujarat and others, (2006) 5 SCC 446, he has further contended that when the criminal Court has honourably acquitted the petitioner after a full-fledged trial, it is not open to the respondent bank to render findings to the contrary on the same set of charges and on the very same evidence, in the domestic enquiry, since the same would be unjust, unfair and rather oppressive.

5. Pointing to the Court the provision of Rule 19(1)of the State Bank of India Officers Service Rules, Mr.Prasad has further argued that when the competent authority to grant permission to retire from service being Deputy Managing Director (Personnel), till date, has not passed any order and also when it is not in dispute that by notice dated 10.3.93 the petitioner had sought for voluntary retirement with effect from 10.6.93, in terms of the fourth proviso to Rule 19(1), he is deemed to have retired from service after the expiry of three months notice period. In support of this submission, he has also again relied upon another judgment of the Apex Court in the case of Ashok Kumar Sahu v. Union of India and others, (2006) 6

SCC 704 for the proposition that on the date of seeking permission for voluntary retirement, if there is no disciplinary proceeding pending, it was obligatory on the part of the competent authority to apply its mind and pass appropriate orders and the competent authority cannot delegate its power to anyone. In the present case, as the competent authority is the Deputy Managing Director (Personnel), who is the competent authority and having not passed any order, the order passed by some other authority is non est in the eye of law and it is coram non judice. Adding further he has submitted that when the petitioner was informed by the letter dated 4.5.93 declining his request for voluntary retirement till a final decision is taken in the matter, in view of certain lapses alleged to have been committed by him in securities transactions while on deputation to SBI CAP, Madras, subsequently, when the criminal case in which he was accused of, for the offence under Section 120-B read with 409 of IPC and Section 13(1)(c) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, turned in his favour acquitting him from all the charges by clearly giving a finding that there is practically no material on record and that the prosecution has not been in a position to prove the conspiracy beyond reasonable doubt against the petitioner, even after the judgment dated 6.9.2013 acquitting the petitioner from all the charges, the rejection of the offer to retire voluntarily is untenable and unjustifiable.

6. Continuing his arguments, Mr.N.G.R.Prasad further contended that by order dated 20.4.2000, this Court permitted the bank to proceed with the departmental enquiry giving a direction to the authority to adhere to the principles of natural justice with a further direction that before passing final order, they have to obtain the permission of this Court. However, without conducting enquiry as directed by this Court, the respondent bank framed two charges viz., (i) absenting from duty without first obtaining permission of the competent authority and (ii) undertaking outside employment without the previous sanction of the competent authority. Although the petitioner took a stand that he had retired from service from 1.12.93 and the question of absence from service and taking employment outside did not arise, the enquiry was proceeded with in his absence holding that the said two charges were proved. Accordingly, the Chief General Manager/appointing authority of the State Bank of India, Ahmedabad passed an order on 24.9.2001 imposing the penalty of dismissal from service. In the said order, it was also stated that in view of the above penalty, the earlier disciplinary proceedings in DPO/813 dated 7.2.94 is to be kept in abeyance in the event of the penalty of dismissal was set aside or varied. Having been aggrieved by the said order, the petitioner preferred an appeal

to the appellate authority, the third respondent herein praying to set aside the order of dismissal from service. Although the appellate authority, the third respondent herein passed an order on his appeal modifying the dismissal into one of removal, the same was not communicated to him. As the order of the appellate authority was not furnished, a written letter dated 2.10.2002 was sent to the appellate authority. However, there was no reply, which compelled him to send a letter to the first respondent requesting to furnish a copy. The same also evoked no reply. Mr.N.G.R.Prasad pointing out to this Court that it is an admitted case that the order of dismissal has been set aside by the appellate authority, the third respondent herein, but the same has not been given. However, in the impugned order dated 23.1.2003, the reviewing authority directed the departmental proceedings in respect of the charge sheet dated 7.2.94 to be continued from the stage at which it was stopped. When the petitioner was not aware of the reason for setting aside the dismissal order, setting aside of the orders of dismissal and removal with a direction to proceed with the departmental proceedings in respect of the charge memo dated 7.2.94 is against Rule 69(4), which says that every order, notice and other process made or issued under this section shall be served on the officer concerned in person or communicated to him by registered post at his last known address.

7. Pleading further, he has submitted that when the order of dismissal passed by the disciplinary authority was set aside by the third respondent/appellate authority and also it is an admitted case that the modified order of removal from service passed by the appellate authority till date has not been furnished, the second respondent/ reviewing authority, by setting aside the order of removal without giving a copy thereof till date to the petitioner, once again cannot direct the disciplinary authority to continue the disciplinary proceedings in respect of the charge sheet DPO/813 dated 7.2.94 from the stage at which it was stopped. Emphatically submitting that when the petitioner was not informed of the reasoning for setting aside the dismissal order by the appellate authority, again when it is not even known to the petitioner as to what are the defects the reviewing authority had noticed for interfering with the dismissal order and the removal order, in view of the huge passage of twenty long years from the date of issuance of the charge memo dated 7.2.94, it will be highly impracticable, unviable and impossible for both the department and also the petitioner to proceed/participate in the enquiry, more particularly, when the criminal court had already given a finding that there is practically no material on record made against the petitioner.

8. Again pointing to this Court that the appellate authority is empowered to deal with the appeal under Rule 69(2) to consider whether the penalty against which the appeal is filed is excessive or inadequate, on considering the same, the appellate authority may pass an order confirming, enhancing, reducing or setting aside the penalty. Again under Rule 69(3), the reviewing authority may call for the records of the case within six months of the date of the final order and after reviewing the case, it may pass further orders. However, Rule 69(4) says that every order, notice and other process made under this section shall be served on the officer concerned in person or communicated to him by registered post at his known address. As this aspect has been completely overlooked by the reviewing authority, it will be highly prejudicial to face the disciplinary proceedings afresh at the hands of the disciplinary authority, when the appellate authority in this case, has admittedly set aside the order of dismissal passed by the disciplinary authority. Therefore, the impugned proceedings are liable to be set aside.

9. Per contra, Mr.S.Ravindran, learned counsel for the respondent bank, opposing the above submissions and urging this Court to dismiss the writ petitions on the premise that the writ petitions are misconceived, as no legal injury has been caused to the petitioner, submitted that after the petitioner was deputed to SBI CAP, Madras in August, 1988, which is a subsidiary of the first respondent bank, he continued to be an employee of the first respondent bank and he was also given promotion by the bank in Senior Management Grade Scale-V with effect from 1.8.89 during his deputation. After his deputation came to an end on 19.5.92, he was transferred to Ahmedabad local head office and posted as Chief Instructor in the State Bank of India Staff Training Centre at Baroda. While so, he gave his letter dated 10.3.93 to the bank requesting that he would like to voluntarily retire from service under the fourth proviso to Rule 19(1) of State Bank of India Officers Service Rules. The second respondent in his letter dated 4.5.93 informed the petitioner that in view of certain lapses alleged to have been committed by him in securities transactions while posted at SBI CAP, Madras, connected with the security scam, the first respondent-competent authority has declined to accept his request for voluntary retirement till a final view in the matter is taken. Placing on record the letter dated 30th April, 1993 issued by the Deputy Managing Director (Personnel), he contended that the petitioner's request letter dated 16.3.93 seeking retirement was already rejected and the same was also communicated to him on 4.5.93. Therefore, his claim that he was constrained to send a reminder on

24.10.93, which also did not evoke any response, resultantly, he waited for more than four months from the expiry of the period of notice dated 10.6.93, finding no response from the first respondent, sending one another letter of voluntary retirement on 22.11.93 in terms of the fourth proviso to Rule 19(1) enclosing a cheque for three moths pay in lieu of notice and conveying his decision of having voluntarily retiring from service of the first respondent with effect from 1.12.93, since he complied with the fourth proviso to Rule 19(1), is far from acceptance, for the simple reason that when the request of the petitioner seeking voluntary retirement was already rejected by the competent authority, the Deputy Managing Director (Personnel) on 30.4.93 and the same was also communicated by the letter dated 4.5.93.

10. Continuing his arguments, he submitted that as per the fourth proviso to Rule 19(1), the competent authority's permission is a sine qua non for any employee to voluntarily retire from the bank's service. When such permission has already been denied in writing by the first respondent by letter dated 4.5.93, the petitioner cannot circumvent the rejection by sending three months pay to the first respondent Therefore, his contention that his communication along with the cheque for three months pay in lieu of notice would comply with the requirement of the rule so as to enable him to have retired from service with effect from 1.12.93, is absolutely untenable. Adding further he has submitted that since the respondents have replied both to the letter dated 10.3.93 as well as letter dated 21.11.93 declining to grant such permission, the claim of the petitioner that he is deemed to have retired from service as per the fourth proviso to Rule 19(1), thereafter, issuing any charge memo inter alia on the ground of unauthorised absence, is wholly misconceived and falls to the ground. Therefore, the department decided to hold a departmental proceeding against the petitioner and, after appointing an enquiry officer, sent a communication dated 1.11.94. Thereafter the petitioner's request to give copies of certain documents also, though dilatory in nature, was acceded to by letter dated 30.12.94 advising him to inspect the documents. Again he was informed by letter dated 13.3.95 to participate in the enquiry and avail of the opportunity against the charges levelled against him. Besides, when the petitioner had committed certain lapses while he was posted to SBI CAP, Madras and also when the details of irregularities were also mentioned in the charge memo dated 7.2.94 calling for explanation, the petitioner cannot say that he has got a right to retire from service after completing 20 years of service without the permission of the competent authority, that too, when his request was already rejected, more particularly, without vindicating

his innocence to the charges already framed against him.

11. Finally, in view of the rejection of his request by the competent authority, as he continued to be in the service of the first respondent, the petitioner did not attend the enquiry on 6.6.2000 and 4.7.2000, hence, the enquiry was held ex parte on 4.7.2000. After concluding the enquiry, the enquiry officer submitted his report on 12.7.2000 and a copy of the report was also forwarded to him on 17.10.2000. On receipt of the same, he submitted his written explanation on 27.10.2000. Only thereafter, the dismissal order was passed under Rule 67(h), in view of the mala fide intention of taking up employment while discharging his duties in the bank in order to earn money illegally by the petitioner. Secondly, the appointing authority ordered for forfeiture of gratuity by order dated 24.9.2001. Aggrieved by the same, the petitioner preferred appeal to the third respondent, who is the appellate authority and the appellate authority by its order dated 24.7.2002 ordered that both the charges stood proved against him and further directed that the punishment being harsh, reduced the same to removal from service under Rule 67(g) of the State Bank of India Officers Service Rules and set aside the order of forfeiture of gratuity. However, the reviewing authority by order dated 23.1.2003 set aside the orders of the appointing authority and also the appellate authority with a further direction to the disciplinary authority to continue the disciplinary proceedings against the petitioner in respect of the charge sheet No.DPO/813 dated 7.2.94 from the stage at which it was stopped. However, since this Court in W.M.P.No.2646 of 1997 ordered for stay of further proceedings pursuant to the departmental enquiry notice dated 1.11.94, the respondent bank filed W.M.P.No.7118 of 2000 praying for modification of the order of stay with permission to proceed with the departmental enquiry pursuant to the notice dated 1.11.94. This Court by order dated 20.4.2000 permitted the third respondent to proceed with the departmental enquiry adhering to the principles of natural justice and to complete the departmental enquiry, however, with the permission of this Court before passing orders. That apart, as the petitioner was also served with another charge memo dated 15.1.98 relating to his unauthorised absence from 1.12.93 without obtaining permission in terms of Rule 40(2) and 58(1) of the State Bank of India Officers Service Rules and undertaking outside employment without the previous sanction of the competent authority, the enquiry in respect of this charge sheet was also held on 23.10.98 and 24.10.98 and the enquiry officer also submitted his report on 16.10.2000 holding him guilty of all the charges and thereupon he was imposed with the punishment of dismissal with forfeiture of gratuity by order dated 24.9.2001. As against that,

when the petitioner preferred appeal, the appellate authority by order dated 24.7.2002 modified the order of dismissal into one of removal from service. Again the order of the appellate authority dated 24.7.2002 was also reviewed by the human resources committee of the bank in terms of Rule 69(3), setting aside the order of the appellate authority and directed the disciplinary authority to continue the departmental proceedings against the petitioner in respect of the charge sheet DPO/813 dated 7.2.94 from the stage at which it was stopped.

12. Replying to the plea of prejudice said to have been undergone by the petitioner for non communication of the order of the appellate authority, Mr.S.Ravindran, learned counsel for the second respondent further submitted that when the order of the appellate authority modifying the order of dismissal passed by the disciplinary authority had been completely set aside by the reviewing authority directing the continuation of disciplinary proceedings in respect of the first charge sheet dated 7.2.94 and the second charge sheet dated 15.1.98 and that the petitioner has been directed to face the enquiry, he has not been put to any prejudice, because there is no punishment imposed against him. Hence, there is no cause of action for him to proceed with the writ petitions.

13. Mr.S.Ravindran, learned counsel for the respondents, taking support from the judgment of the Apex Court in the case of State Bank of India v. Ram Lal Bhaskar and another, (2011) 10 SCC 249, which deals with Rule 19(3) of the State Bank of India Officers Service Rules, 1992, submitted that the disciplinary proceedings initiated under Rule 19(3), while an employee was in service, could be continued at the discretion of the Managing Director, even after retirement. Therefore, when the disciplinary proceedings were initiated prior to the delinquent officer ceased to be in service, the respondent bank is entitled to invoke Rule 19(3). Hence, the disciplinary proceedings can be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the rules, as if the petitioner officer continues to be in service, inasmuch as he shall be deemed to be in service only for the purpose of continuance and conclusion of such proceedings. In support of his submissions, he has again cited one another decision of the Apex Court in the case of Forest Department and others v. Abdur Rasul Chowdhury, 2009 (3) L.L.N.8 to contend that in the present case, while the delinquent officer was in service, departmental proceedings had been initiated by the employer/respondent bank by issuing a charge memo dated 7.2.94 and the proceedings could not be completed before he retired from

service, since he had obtained an order of stay from this Court by filing W.P.No.6460 of 1995 challenging the charge memo. In the meanwhile, since the petitioner was issued with another charge memo dated 15.1.98 containing two charges, namely, absented from duty without first obtaining permission of the competent authority to undertake outside employment under Rule 68(2)(iii) of the State Bank of India Officers Service Rules, he neither submited his defence statement to the charge memo nor bothered to attend the enquiry on 6.6.2000 and on 4.7.2000, with the result, an ex parte enquiry was held on 4.7.2000 and documents were marked on the side of the management and the enquiry officer submitted his report on completion of the enquiry on 12.7.2000. A copy of the report was furnished to the petitioner for his reply and on receipt of the same, the petitioner also submitted his explanation on 27.10.2000. On consideration of the report of the enquiry officer and other materials including the petitioner's submission, the disciplinary authority came to the conclusion that dismissal from service be imposed under Rule 67(h) and thereupon made its recommendation to the appointing authority, who also, after considering all the materials and records, imposed the punishment of dismissal from service under Rule 67(h) along with forfeiture of gratuity by order dated 24.9.2001 and also the same was modified as removal. Again the reviewing authority, keeping in abeyance the further major disciplinary proceedings for certain other acts of misconduct, as per the earlier charge memo dated 7.2.94, reserving its right to resume those proceedings from the stage at which they were kept in abeyance and to proceed further against him, by the impugned order dated 23.1.2003, setting aside even the order of removal passed by the appellate authority, decided to proceed with the charge memo dated 7.2.94 from the stage at which it was stopped. In the light of Rule 19(3) of the State Bank of India Officers Service Rules under which the disciplinary proceedings initiated against the petitioner while in service can be continued at the discretion of the Managing Director, although the petitioner retired from service, on this basis, he further submitted that there is no impediment for the respondent bank to proceed further from the stage at which it was stopped.

14. Heard the learned counsel for the parties.

15. Three issues need to be answered in this case. Firstly, whether the petitioner, who has sent his letter of voluntary retirement on 10.3.93 seeking permission to retire from service, as he has completed 23 years of service in the respondent bank, is deemed to have been retired from the bank's service in the light of the fourth proviso to Rule 19(1). To answer the same, it is necessary

to extract Rule 19(1) as follows:-

> ''19.(1) An officer shall retire from service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.
> Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension.
> Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after July 19, 1969 and attained the age of 58 years shall not be granted any further extension in service.
> Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months notice in writing or pay in lieu thereof.
> Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived by it.''

16. As per the above fourth proviso to Rule 19(1), an officer who has completed 20 years of service may be permitted by the competent authority to retire from the bank's service, subject to his giving three months notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived by it. In the case on hand, the petitioner by sending his letter dated 10.3.93 to the Deputy Managing Director (Personnel), State Bank of India sought for

voluntary retirement from his service saying that he has complied with the requirement of three months notice for giving voluntary retirement. By letter dated 4.5.93, the petitioner was informed that the competent authority has declined to accept his request for voluntary retirement, citing the reason that certain lapses alleged to have been committed by him in securities transactions while posted at SBI CAP, Madras have been pending. Mr.S.Ravindran has also placed on record one another communication dated 30.4.93 issued by the Deputy Managing Director (Personnel) addressed to the Chief General Manager, Ahmedabad and the contents of which read as under:-

> ''Refer to your letter No.PER/PIR/03997 dated March 16, 1993 on the captioned subject.
>
> In view of certain lapses alleged to have been committed by Shri C.R.L.Narasimhan, SMGS V, in securities transactions while posted at SBI Capital markets Ltd., Madras, it has been decided with the approval of Executive Committee of the Central Board at its meeting held on ... to decline the request of Shri C.R.L.Narasimhan seeking for voluntary retirement vide his request dated 10.3.93 till a final view on his culpability if any is taken.
>
> Please advise the official suitably in the matter.''

17. A reading of the same shows that the competent authority i.e., the Deputy Managing Director (Personnel) has decided that in view of certain lapses alleged to have been committed by the petitioner in securities transactions while posted at SBI CAP, Madras, with the approval of the executive committee of the central board at its meeting, declined the request of the petitioner for voluntary retirement. Therefore, when the Deputy Managing Director (Personnel), who is the competent authority under Rule 19(1), considered the case of the petitioner and rejected his request to go on voluntary retirement, the argument advanced by Mr.N.G.R.Prasad that in the absence of any order passed by the competent authority rejecting or accepting his request, the petitioner is deemed to have retired from service, is far from acceptance.

18. The second issue is, when the petitioner has already suffered an order of dismissal and forfeiture of his gratuity by order dated 24.9.2001, on appeal by order dated 24.7.2002, reducing the punishment to that of removal from service under Rule 67(g) of

the State Bank of India Officers Service Rules by setting aside the order for forfeiture of gratuity, whether the reviewing authority by its order dated 23.1.2003, while setting aside the order of the appointing authority and the appellate authority, can direct the disciplinary authority to continue the departmental proceedings against the petitioner in respect of the charge sheet No.DPO/813 dated 7.2.94 from the stage at which it was stopped? In the present case, the charge memo was issued on 7.2.94 when the petitioner was in service and there are clear provisions in Rule 19(3) of the State Bank of India Officers Service Rules, 1992 that in case disciplinary proceedings have been initiated against an officer before he ceased to be in the bank's service by the operation of law, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded in the manner provided for in the Rules as if the officer continues to be in service, therefore, there is no legal bar for the respondent-Bank to continue the enquiry proceedings even after the retirement of the petitioner from service. However, since he was allowed to retire from service on reaching the age of superannuation on the subsequent vital communication dated 27.8.2007 issued by the Chief General Manager (O.H.), it shows clearly that the competent authority has approved the petitioner's retirement on 31.8.2007 under Rule 19(3) of the State Bank of India Officers Service Rules, nonetheless, he has been retained in service for the limited purpose of continuing and concluding the disciplinary proceedings initiated against him.

19. When the petitioner was allowed to retire from service by the communication dated 27.8.2007, it is necessary to read the law laid down by this Court on this issue. The ratio of the Hon'ble Full Bench of this Court in the case of C.Mathesu v. The Secretary to Government, Revenue Department and others, 2013 (3) CTC 369 holds that in cases where the Government servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced, squarely applies to the case on hand. In this context, it is relevant to extract paragraph-28 of the aforesaid judgment as follows:-

> ''28. From the aforesaid discussion, the following broad principles emerge:
>
> (i) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if

charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(ii) If there is any statutory provision for continuing the departmental proceedings like Rule 9 (2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(iii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9 (2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(iv) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.''

20. A careful reading of the above ratio clearly shows that if the Government servant is allowed to retire on attaining the age of superannuation, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. As the Hon'ble Full Bench has settled the law, in the light of the order dated 27.8.2007 granting the approval for the petitioner's retirement with effect from 31.8.2007 under Rule 19(3) of the State Bank of India Officers Service Rules, the question of passing the order of dismissal or removal from

service does not arise.

21. Now the next final question is whether the petitioner can be directed to face the enquiry at this huge and long lapse of time. To find an answer, it is more pertinent to see the ratio of the Apex Court in the case of Capt.M.Paul Anthony v. Bharat Gold Mines Limited and another, (1999) 3 SCC 679, wherein it is held that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. In this context, it is necessary to extract the above ratio of the Hon'ble Apex Court, presently holding the issue on hand, as follows:-

> ''22. The conclusions which are deducible from various decisions of this Court referred to above are :
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions offact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
>
> (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.''

22. Paragraph 22(ii) clearly shows that if the disciplinary proceedings and criminal case are based on identical and similar set of facts and the charge in the criminal case is of grave nature, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. That implies that the delinquent who has been facing the charge in the criminal case and also before the departmental proceedings on identical and similar set of facts should not be proceeded with before the criminal Court rendered its findings on the charges. Admittedly, in the present case, the Special Court by its judgment dated 6.9.2013 acquitted all the three accused from the offences including the petitioner on the basis of the following three findings:-

''(i) In my view the said conduct, at the most, would have made deceased S.K.Kumar or deceased Harshad S.Mehta liable. But there is no material on record to indicate that C.R.L.Narasimhan could be treated or termed as co-conspirator since, from the evidence of the said two witnesses viz., P.W.2 and P.W.13, it can be seen that he was acting on the instructions given by the said two witnesses. On the other hand, there is material on record to show that C.R.L.Narasimhan had, in fact, insisted upon getting these securities but on the assurance given he had not proceeded further to probe into the matter.

(ii) From the evidence of P.W.1 S.Nandakumar and P.W.13 C.Gopalraj, it can be seen that accused No.2 C.R.L.Narasimhan was following the instructions given by his superiors and P.W.13 C.Gopalraj, at the relevant time, was his superior officer.

(iii) From the aforesaid reasons, therefore, in this case, in my view, the Investigating Officer has acted in a mechanical manner and he ought to have

> investigated the offence properly. It does appears that those officers who were actually responsible were allowed to go scot-free and accused No.2 against whom there is practically no material on record was made an accused and was made to face this trial.''

23. The above judgment of the trial Court clearly shows that those who were actually responsible were allowed to go scot-free and the petitioner against whom there is practically no material on record was made as an accused to face the trial, therefore, when the respondent bank by the letter dated 27.8.2007 permitted the petitioner to retire from service even before the criminal Court could render its findings, it clearly shows that the competent authority itself did not want to proceed against him, may be for the reason that the matter has been pending for quite a long time. As highlighted above, in view of the fact that the criminal Court had given its findings and conclusions that the petitioner was only acting on the instructions given by his superior officers and those officers who were actually responsible were allowed to go scot-free, the petitioner alone, against whom there is practically no material on record, was made an accused, no real purpose would be served for continuing the departmental proceedings. Therefore, the impugned orders are quashed and the writ petitions are allowed. Consequently, the respondents 1 & 2 are directed to release the service benefits to the petitioner including provident fund, gratuity, pension and arrears, if any, on and from the date on which he was permitted to retire viz., on 31.8.2007 with interest at the rate of 6% per annum till the date of this order, within a period of six weeks from the date of receipt of a copy of this order. Consequently, W.P.M.P.Nos.16150 of 2003, 264 and 265 of 2013 are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Managing Director (Personnel)
   State Bank of India
   Madame Cama Road
   Mumbai-21

2. The Reviewing Authority
   (Central Office Human Resources Committee)
   State Bank of India
   Central Office
   Madame Cama Road
   Mumbai-21

3. The Appellate Authority
   State Bank of India
   Central Office
   Madame Cama Road
   Mumbai-21

4. The Chief General Manager
   State Bank of India
   Ahmedabad Local Head Office
   Bhadra
   Ahmedabad

5. The Commissioner for Departmental Enquiry
   Government of India
   Central Vigilance Commission
   Satarkta Bhavan I.N.A.,
   New Delhi-23

6. Commissioner of Domestic Enquiry
   Central Vigilance Commission
   Government of India, Block No.10
   Akbar Road, New Delhi-1

1 CC to M/s Row & Reddy, Advocate SR.No. 14150

W.P.Nos.6460 of 1995 & 12890 of 2003

CA(CO)
PSI (25.03.2015)