

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.573 of 2015(O&M)

Date of decision: 08.12.2015

Narinder Paul Rana

....Appellant

VERSUS

Union of India and others

.....Respondents

CORAM: **HON'BLE MR. JUSTICE HEMANT GUPTA**
 HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. H.S. Dhindsa, Advocate for the appellant.

HEMANT GUPTA, J.

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench on 19.05.2014 whereby the claim of the Appellant for pension was declined.

The issue is whether the appellant has resigned on 07.05.2009 or has sought voluntary retirement vide the aforesaid letter sent through email. If the appellant has resigned, he is not entitled to pensionary benefits in terms of Regulation 22 of the Oriental Bank of Commerce (Employees') Pension Regulations, 1995 (for short 'Pension Regulations'). However, if the appellant is found to have submitted request for voluntary retirement, then he may be entitled to pensionary benefits. Another question which will arise is whether the appellant, who was in service of the Bank prior to 29.09.1995 and retired after 27.04.2010, would be entitled to opt for second pension option.

The appellant availed Ex-India Leave on 06.05.2008 to go abroad from 19.05.2008 to 17.07.2008. The appellant applied for extension of leave vide the email dated 19.07.2008. The appellant was informed on 01.08.2008 that the request has been considered but not acceded to. The appellant was advised to submit medical certificate which was not furnished. Consequently a show cause notice was issued to the appellant on 20.12.2008 to reply as to why action should not be taken against him. Since no reply was received, the appellant was served with a charge-sheet proposing an action for misconduct under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982 on 28.01.2009. It is thereafter, the appellant communicated the following through email on 07.05.2009:-

“Your letters ROP/HRD/620/2008/10824 dated 22.12.2008, 17216 dated 20/2008, memo dated 28.1.2009 and ROP/HRD/620/2009 letter dated Feb 17/2009.

This is further to my replies of above said letters dated Nov 21/2008, Jan 07/2009, Feb 26/2009, March 01/2009, March 03/2009 and May 06/2009, I remained on medical leave from 18.07.2008 to till date due to poor health conditions for which I have submitted my medical certificates duly notarized and countersigned by Consulate General of India vide my letters dated Nov 21/2009, Feb 26/2009, March 03/2009 and May 06/2009.

Due to continuing of poor health conditions, I shall not be able to join office as such I hereby tender my resignation on medical grounds.

I further seek retirement under Volunteer Retirement Scheme of the Bank.

In view of my long association with the bank, I rendered my service with full honesty, zeal and enthusiasm so I request to consider my case sympathetically and relieve me from the bank by 31.5.2009. Kindly waive off my notice period on special case.

I further request you to appropriate my dues to my housing loan with B/O A Tank Patiala BR. I further undertake to deposit residual amount of Housing Loan if any at the earliest.

Thanking you.”

The said communication was treated as resignation on behalf of the appellant when it was accepted on 16.09.2010 (Annexure P-4). Vide Annexure P-4, the appellant was paid for 113 days leave available to his credit and the admissible amount credited to his bank account. On 01.10.2010, vide Annexure P-3, the appellant was communicated that resignation has been accepted vide communication dated 16.09.2010 and certain documents were sought for settlement of retirement dues. Another communication was addressed to the appellant on 21.10.2010 (Annexure P-5) communicating that the appellant is not eligible for 2nd Pension option.

It is thereafter, the appellant filed the writ petition leading to the order impugned in the writ petition on 04.04.2012. The appellant averred to the following effect in the writ petition:-

“5. That keeping in view joint note (Annexure P-1) as well as Bi Partite Settlement with the workmen unions and bank dated 23.8.2010 (Annexure P-2), the petitioner who was in service submitted resignation alongwith pension option form-A and amount of Rs.7,03,887.18 but second pension option opted by the petitioner was duly rejected and amount returned by the respondent No.2 & 3 without any reasonable justification with the reason as the petitioner has resigned from the service of the bank, therefore he was not eligible for the second pension option. The letter of resignation accepted by the bank is annexed herewith as Annexure P-3. It is relevant to mention here that vide letter dated 16.9.10 issued by Dy. General Manager of respondent bank, it was informed to the petitioner that his representation had been accepted under Regulation 20(2) of Officer Service Regulation and 90 days salary had been recovered in lieu of notice period. This letter is annexed herewith as Annexure P-4 and rejection of the second pension option prayed by the petitioner vide letter dated 21.10.10 is annexed herewith as Annexure P-5.”

At this stage, it may be noticed that the primary claim of the appellant before the Writ Court was of his entitlement to pension in terms of the said Bipartite Settlement dated 27.04.2010 (Annexure P-6).

In reply, the Bank pointed out that the circular dated 23.08.2010 in respect of Bipartite Settlement does not entitle the appellant for second pension option as he resigned prior to 27.04.2010. It is also pointed out that the appellant submitted his resignation vide email dated 07.05.2009 when he was in Canada. It is also pointed out that the appellant cannot compare the employees who have taken voluntary retirement in terms of Special Voluntary Retirement Scheme introduced in the year 2000.

Learned counsel for the appellant has vehemently argued that in the communication dated 07.05.2009, the appellant has sought voluntary retirement. Therefore, the Bank could accept voluntary retirement but could not treat the request as that of a resignation. He relies upon judgment of Hon'ble Supreme Court in Shashikala Devi v. Central Bank of India and others, (2014) 16 SCC 260.

Regulation 22 of the Pension Regulations contemplate that resignation shall entail forfeiture of the entire past service and consequently shall not qualify for pensionary benefits, whereas Regulation 29 contemplates that if any employee has completed 20 years of qualifying service on or after 1st day of November, 1993, he may, by giving notice of not less than three months retire from service. The relevant extract from the Regulations reads as under:-

“22. Forfeiture of Service

- (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of

his entire past service and consequently shall not qualify for pensionary benefits;

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29. Pension on Voluntary Retirement

- (1) On or after the 1st day of November,1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.”

A perusal of the email dated 07.05.2009, as extracted above, shows that the appellant has tendered his resignation on medical grounds having sent medical certificates duly notarized and counter-signed by Consulate General of India. After submitting resignation, he further mentioned that he is seeking retirement under Voluntary Retirement Scheme of the Bank and sought to be relieved by 31.05.2009. The communication does not give three months’ notice as is mandated by Regulation 29 of the Pension Regulations. A reading of the letter shows that the appellant submitted his resignation and sought waiver of the notice period keeping in view his long association but laid no claim to pension.

The communications dated 16.09.2010 and 01.10.2010 by the Bank are clear and categorical that the communication dated 07.05.2009 has been treated to be that of resignation. Even in the writ petition, the appellant has categorically averred that he has submitted his resignation. Still further, the appellant was charge-sheeted for a misconduct for remaining absent from duty. In terms of Regulation 29, the request to seek voluntary retirement has to be approved by the Appointing Authority. Since, the appellant is not categorical to seek voluntary retirement nor has given three months' notice nor the Appointing Authority has accepted the request of voluntary retirement, therefore, the appellant cannot claim that he sought voluntary retirement and had not submitted resignation.

The appellant has not disputed that he did not submit the resignation in the writ petition though the writ was filed almost after 16 months of the communication of the Bank relieving the appellant. Therefore, we find that the appellant cannot be permitted to say that he has sought voluntary retirement.

The judgment in Shashikala Devi's case (supra), is a case where the husband of the appellant was in critical medical condition submitted resignation though she was entitled to seek voluntary retirement as well. The appellant was given benefit of pension, but the said case does not deal with the situation where an employee who was on ex-India Leave failed to report for duty after permissible leave; charge-sheeted for remaining absent from duty and then submitted resignation.

The Bipartite Settlement (Annexure P-6) entitles pension only to serving employees; those who superannuated; those who opted for voluntary retirement under Special Voluntary Retirement Scheme and the family of deceased employees and retirees. The appellant was not a

serving employee nor has superannuated nor has opted for voluntary retirement under the Special Voluntary Retirement Scheme which is other than the voluntary retirement in terms of Regulation 29 of the Pension Regulations. Therefore, the appellant is not entitled to any benefit of bipartite settlement.

In view thereof, we do not find any error in the findings recorded by learned Single Bench which may warrant interference in the present Letters Patent Appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

DECEMBER 08, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE