*   IN THE HIGH COURT OF DELHI AT NEW DELHI

+   W.P.(C) No. 6783/2013

%   **06th April, 2015**

MANGAT RAI SHARMA ..... Petitioner
Through: Mr.Harish Sharma, Advocate.

versus

INDIAN BANK ..... Respondent
Through: Mr.Himanshu Munshi, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, who was an employee of the respondent/Indian Bank seeks the relief that he be granted pension w.e.f 01.9.2010 on account of he having validly exercised the option of pension on 28.8.2010 i.e well before the cut off date of 20.11.2010.

2. The limited issue in the present case is that whether the petitioner had exercised his option before the cut off date of 20.11.2010. The respondent/Bank rejected the pension option on the ground that the petitioner had only applied on 23.12.2010 i.e after the cut off date of 20.11.2010, and this

aspect is mentioned in the impugned letter of the respondent/Bank dated 23.12.2010 issued to the petitioner.

3. Petitioner along with the writ petition has filed an Annexure P-3, his exercise of option for pension dated 28.8.2010, and though the respondent/Bank has denied receiving the same in the counter-affidavit, however, the respondent/Bank's own letter dated 16.12.2010 shows that the petitioner had duly given his option in terms of his form dated 03.9.2010 i.e before 20.11.2010. Since the letter of the respondent/Bank dated 16.12.2010 is decisive of the issue, the same is reproduced as under:-

"REF:DGM:ICD:MF2:10 **Dated: 16.12.2010**

To
The General Manager (HRM)
Indian Bank
Head Office
66 Rajaji Salai
Chennai

Dear Sir,

Sub: Forwarding of one Application for pension

We forward herewith representation dated 16.12.2010 received from Mr. Mangat Rai Sharma, Chief Manager (Retd.) SR No.3481 who has gone on Superannuation from 31.08.2010.

<u>Earlier we have forwarded the Annexure-I duly filled up by him & forwarded to you on 03.09.2010</u> and we have recovered 2.8 times of Basic Pay components of revised pay for November 2007 amounting 103,880/- from him.

> Now we are forwarding his representation dated 16.12.2010 along with Annexure-V, Annexure-VII and Annexure-IX.
>
> Yours faithfully,
> Sd/-
> Deputy General Manager"
>
> (underlining added)

4. The petitioner has mentioned about the respondent's aforesaid letter dated 16.12.2010 in para 12 of his writ petition, and to which the respondent/Bank in its counter-affidavit has given no effective reply, and this is obviously so because the respondent/Bank would not be able to deny that the letter dated 16.12.2010 was issued by its own officer. Para 12 of the counter-affidavit of the respondent/Bank reads as under:-

> "12. With reference to Para 12 of the Writ Petition it is submitted that the statement of the petitioner itself indicates that the pension application was submitted belatedly."

5. It is therefore clear that the petitioner had exercised the option before the cut off date being 20.11.2010, and therefore the respondent/Bank was bound to grant pension to the petitioner.

6. The respondent/Bank has contended in its counter-affidavit that on retirement of the petitioner, petitioner was credited the amount of provident fund being the terminal benefit, and it is therefore argued that the petitioner cannot get the benefit as claimed because the petitioner has received the entire provident fund amount. This contention of the respondent/Bank is however

misconceived for the reason that the present is not a case where the petitioner was a retired employee of the respondent/Bank and that when he exercised the option he had already received the provident fund at the time of his retirement, and, the present case is a case where the respondent/Bank in spite of the petitioner before retirement having exercised the option, credited *suo moto* the provident fund amount to the account of the petitioner. The petitioner in his writ petition has stated that the said amount is still lying in the savings bank account from 31.8.2010 till date. Clearly, therefore the respondent/Bank should not be allowed to take advantage of its own wrong in wrongly crediting the provident fund amount, more so the petitioner has not utilized the same, and therefore there cannot be any estoppel against the petitioner in the facts of the present case.

7. In view of the above, the writ petition is allowed. Petitioner will be deemed to have exercised the option validly on 28.8.2010. Petitioner will within a period of two weeks from today refund the amount which has been credited in his bank account on account of provident fund which was credited to his bank account either by issuing a cheque or giving any other authorization to the respondent/Bank alongwith whatever amount petitioner has received as interest on this amount. If there is any issue of petitioner paying back a lesser amount, and if this is so claimed by the respondent/Bank, then the

respondent/Bank will be entitled to debit from the savings bank account of the petitioner any differential amount towards interest. Petitioner will be entitled to interest @ 5% per annum simple from the date of retirement of the petitioner on the amount of arrears of pension which will now be credited to the account of the petitioner. Future pension in terms of the rules will be paid month by month to the petitioner by the respondent/Bank.

8. The writ petition is allowed and disposed of accordingly, leaving parties to bear their own costs.

APRIL 06, 2015 **VALMIKI J. MEHTA, J.**
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