

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.580 of 2016
IN
Civil Writ Jurisdiction Case No. 15264 of 2015**

=====

1. The Indian Bank Through CMD
2. The Executive Director Cum Appellate Authority, Indian Bank, Corporate Office
Vigilance, Department, Post Box- No. 5555, 254, 260, Avvai Shammugam Salai,
Royapeeth, Chennai-600014.
3. The General Manager, Disciplinary Authority, Indian Bank, Corporate Office,
Vigilance Department, Post Box- No. 5555, 254, 260, Avvai Shammugam Salai,
Royapeeth, Chennai-600014.
All the appellants being represented through their constituted attorney- The Zonal
Manager, Indian Bank, Zonal Office, 1st Floor, Govind Bhawan, Opp. N.P. Centre,
Dak Bungalow Road, Patna- 800001

Appellants – Respondents

Versus

Kaushal Kishore Thakur, Son of Late Brij Kishore Thakur, R/o Flat No.302, Raj
Kishori Apartment, Kavi Raman Path, P.S.- Budhha Colony, District- Patna.

Respondent / Petitioner

=====

Appearance :

For the Appellants : M/s Chitranjan Sinha, Sr. Advocate
Dr. Binay Kumar Singh, Advocate
For the Respondent : Mr. Ashhar Mustafa, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 28-10-2016

We have heard learned counsel for the appellants and
the respondent.

This intra court appeal has been preferred by the Indian
Bank and others assailing the judgment, dated 22.02.2016, passed by
a learned Single Judge Bench, in C.W.J.C. No. 15264 of 2015,



holding that the forfeiture of one third pension of the petitioner-respondent was not in accordance with law and also that it cannot be held that earned leave of the petitioner has lapsed in view of imposition of penalty of compulsory retirement.

The factual matrix, which would be necessary for adjudication of *lis*, stands narrated as under :

A departmental proceeding was initiated against the petitioner that had resulted in his compulsory retirement. The petitioner preferred appeal, but in the appeal also, the order passed by the disciplinary authority was upheld. Both the orders were put to challenge in C.W.J.C. No. 4148 of 2013, which was disposed of vide Annexure 2 of the writ petition, dated 20.01.2014, remanding the matter to the appellate authority for fresh consideration. The appellate authority, again, passed an order, dated 02.06.2014, upholding the earlier punishment, which was, again, challenged by filing C.W.J.C. No. 12365 of 2014 and, as informed, is still pending. The connected writ petition, being C.W.J.C. No. 15264 of 2015, was initially filed for a direction to the competent authority to fix pension and pay other post retiral dues of the petitioner, such as, gratuity, provident fund, leave encashment, group insurance, medical allowance, shifting allowance and other consequential benefits along with interest due.



However, it appears that during the pendency of the writ petition, the disputes, with respect to all other dues, were resolved save and except fixation and payment of pension as well as payment of leave encashment amount. So far payment of fixation and payment of pension is concerned, it appears from the counter affidavit, filed on behalf of the respondent-appellant Bank, in the writ petition on 09.02.2016, that the monthly basic pension of Rs. 13501/- plus admissible D.A. (without taking into the factor of computation) was sanctioned in terms of Regulation 33 of the Indian Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as “the Pension Regulation”). The petitioner raised a plea before the Writ Court that the *deduction* or *forfeiture* of one third of pension amount was erroneous and against law and would also be arbitrary in nature inasmuch as the same was done without issuance of any show cause notice and consideration of any reply of the petitioner and without quantification of the loss incurred by the Bank due to the alleged misconduct of the petitioner.

So far leave encashment is concerned, the Bank took a view that, as the petitioner was inflicted with punishment of compulsory retirement, which would amount to termination of his service, in view of Regulation 38 of Indian Bank (Officers’) Service Regulations, 1979 (hereinafter referred to as “the Service



Regulation”), same would not be payable. In response thereof, the petitioner came up with a plea before the Writ Court that, in view of the admitted position that the petitioner was not terminated from the service, rather, he was compulsorily retired, his punishment would not come within the ambit of Regulation 38 of the Service Regulation and, therefore, his leaves cannot be held to have lapsed.

The Writ Court has decided that the action of deduction / curtailment / forfeiture of one third of the pensionary benefit was *de hors* the established principles of natural justice. That could not have been done without quantifying the loss and also without issuance of notice to the petitioner and granting him reasonable opportunity of showing cause. Similarly, with respect to leave encashment, it has been held that the Service Regulation 38 does not entail forfeiture of leave encashment for compulsorily retired employees.

In view of the rival contentions following issues fall for consideration in this appeal :

- (I) Whether reduction of 1/3rd of the pension can be allowed in the facts and circumstances of the case?
- (II) Whether it can be held that leave of the writ petitioner would lapse leading to forfeiture of the

leave encashment amount?

We would proceed to consider the issues one by one.

Issue No. (I):

Mr. Chitranjan Sinha, learned Senior Counsel appearing for the appellants, has drawn attention of this Court to Regulation 33 of the Pension Regulation. For better appreciation, Regulation 33 is extracted as under:

“33. Compulsory Retirement Pension

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993, in terms of Indian Bank Officer Employees’ (Discipline and Appeal) Regulations, 1976 or awards / settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement, if otherwise he was entitled to such pension on superannuation on that date.

(2) Whenever, in the case of a Bank employee, the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation (1) or, as the case may be under sub-

regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem.”

At the strength of the aforesaid provisions, learned Counsel has submitted that if an employee is compulsorily retired, then, in terms of aforesaid Regulation, the competent authority, which would be higher in rank than the authority competent to impose such penalty, can award pension at a rate not less than two thirds and not more than full pension admissible to him on the date of his compulsory retirement.

Thus, it is contended, on behalf of the appellant – bank, that a competent authority has taken a decision to grant only two third of pension. Since the aforesaid Regulation does not require any prior hearing to be given to the concerned employees, it was not required at all to grant him such opportunity. He has further submitted that it was incorrect to state, on behalf of the writ petitioner, that the loss caused because of misconduct of the petitioner could not be quantified as the same stands stated all along during the course of disciplinary proceeding.

Per contra, learned Counsel, appearing for the writ petitioner – respondent, with the help of Annexure 2 of the writ petition, by which a learned Single Judge Bench of this Court, on an earlier occasion, had remanded the matter to appellate authority



for fresh consideration, has submitted that one of the grounds for remitting back the matter was the fact that the learned Counsel, appearing for the Bank, was not able to counter the submission made on behalf of the writ petitioner that the loans, advanced by the petitioner, while in service, have substantially been recovered and most of the accounts were closed amounting to the fact that there was no loss or negligible pecuniary loss. It has been urged that, in such a situation, when the loss could not be quantified either during the course of departmental proceeding or during the course of fixation of his pension in terms of Regulation 33 of the Pension Regulation, the decision of withholding / forfeiture of one third of his pension would not be sustainable in the eyes of law.

Upon deeper scrutiny of the matter, we do not find force in the submissions made on behalf of the appellants for the following reasons :

The departmental proceeding and imposition of penalty upon an employee of the Indian Bank are governed by the Indian Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. Major penalty stands described under Regulation 4 and penalty, with respect to compulsory retirement, being one of the major penalties, is provided under Regulation 4(h); whereas the fixation of pension is done under entirely separate Regulation, v.i.z., Indian Bank



(Employees) Pension Regulations, 1995. As stated above, such power of fixation of pension of compulsorily retired employee has been provided under Regulation 33 of the Pension Regulation. Thus, both the actions, i.e., imposing of penalty of compulsory retirement and withholding of one third of the pension, are under different Rules and Regulations, one is under the Indian Bank Officer Employees' (Discipline & Appeal) Regulations, 1976, and the other is under Indian Bank (Employees) Pension Regulations, 1995. Therefore, in one our considered view, the contention of the learned Counsel, appearing for the Bank before the Writ Court, that in view of opportunity having been granted at the time of departmental proceeding and some sort of quantum of loss having been reflected, during that proceeding, was enough for withholding one-third of the pension as both the actions are not severable; rather, the subsequent actions of reduction of pension, as a consequence thereof, has rightly not been accepted by the learned Single Judge. Careful reading of the Regulation 33 of the Pension Regulation would disclose that the competent authority, which is a rank higher than the disciplinary authority, has the option either to grant full pension or withhold the pension up to one-third of the admissible amount. However, the question would be as to what should be the deduction in a particular case? Can it be done without

quantifying the loss to the Bank due to the alleged misconduct?

Answer has to be in negative as without quantifying the loss, any decision to deduct part of pension would be unreasonable and arbitrary. The loss not having been quantified at the time of departmental proceeding, as has been discussed by the learned Single Judge of this Court, while remitting back the matter to the appellate authority for fresh consideration on one of the grounds that the assertions of the petitioner that the almost entire loan amount, granted by him, has already been recovered and that could not be specifically denied by the Bank, such action of withholding specific part of pension can hardly be justified. A question would arise why not deduction would be of 5 % or 10 %, and why it would be of one-third of the total pension? No answer could be given to this query by the Bank. Now, the second reason for discarding such reduction would be the admitted fact that the petitioner was not noticed before taking such step. If a decision is going to be taken in a proceeding, which is severable and separate from the departmental proceeding, as held above, and which is going to affect a person adversely, the doctrine of fair play always require, that opportunity of hearing should be given in view of the well accepted noble principle of *audi alteram partem*. A reference, in this regard, may be made to a decision of the Apex Court



rendered in **Suresh Chandra Nanhorya v. Rajendra Rajak and Ors. [2007(1) BBCJ (SC) 3 = 2007(7) Supreme 222**. The Apex Court has held that natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute unless there is clear a mandate to the contrary. We are in agreement of the views expressed by the learned Single Judge of Gujarat High Court in **A.N. Puniwala vs. Bank of India Ors. [2007(3) GLR 2143]** in this regard. Learned Single Judge, placing reliance upon the aforesaid decision of the Apex Court, along with identical view taken in the cases of **Dr. Rash Lal Yadav v. State of Bihar & Ors**, and **Mangilal vs State of Madhya Pradesh**, has held that the departmental proceeding, initiated under a different statutes than the Regulation whereunder the payment of pension is to be sanctioned by the competent authority, cannot be held to be a consequential one and, thus, even if it is not provided under Regulation 33 of Pension Regulation in express term to grant reasonable opportunity to such employee against whom adverse order of deduction of pension is to be passed, since contrary has also not been provided in the statute, it has to be understood that grant of such opportunity stands embedded in the interstices in the statute. Learned Single Judge, in this regard, has also placed

reliance upon the decision of the Supreme Court rendered in **Swadeshi Cotton Mills v. Union of India.**

Thus, it is held that the aim of the principle of *audi alteram partem* is to prevent miscarriage of justice. The principles of natural justice would not supplant the law but supplement it. The principles of natural justice have many facets. Two of them are: Notice of the case be met and opportunity to explain.

Having held so, ordinarily, this Court would have remitted back the matter to the competent authority to take a fresh decision after issuing notice to the petitioner in the aforesaid background of the matter. However, in view of fact that actual loss, if any, could not be quantified either during the course of departmental proceeding or by the competent authority, while reducing the pension, and it could not be even substantiated before the Writ Court, this Court finds no reason to remitting back the matter, once again, to the concerned authorities. A reference, in this regard may be made to the observation of the learned Single Judge, while remanding the matter to the appellate authority vide Annexure 2 to the connected writ petition passed in C.W.J.C. No. 4148 of 2013, questioning any loss, which has actually incurred by the Bank, as the Bank could not answer the statement made by the



petitioner that no loss has actually been incurred as all the loans, advanced by the petitioner, were recovered. Even after remand, the loss could not be quantified as it has not been stated before learned Single Judge that even the appellate authority has come to such conclusion. However, we would refrain ourselves from making any comment on the appellate order having been passed on merit upholding penalty of compulsory retirement for the reason that the same is under challenge in a different writ petition and, thus, was not a *lis* to be decided before the writ Court.

In above view of the matter, it is held that the judgment, under appeal, on the present issue, cannot be faulted with and the issue is decided against the appellants.

Issue No.(II):

So far the second issue regarding the lapse of leave encashment is concerned, Mr. Chitranjan Sinha, learned Senior counsel for the appellants, has submitted that compulsory retirement is a punishment inflicted upon the writ petitioner and since it leads to termination of the service prior to the date of superannuation, it would amount to termination and, thus, would be covered by Regulation 38 of the Service Regulation. For better appreciation, the relevant provision is extracted as under :

“38. Lapse of Leave



Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or terminate: Provided that where an officer retires from the Bank's service, he shall be eligible to paid a sum equivalent to the emoluments of any period, not exceeding 240 days of Privilege Leave that he had accumulated.

Provided further that where an officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period not exceeding 240 days of Privilege Leave to his credit as on the date of his death.

Provided also that where an officer resigns from service on or after 1st April 2001 after giving due notice as in sub-regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of Privilege Leave to the extent of half of such leave to his credit on the date of cession of service, subject to maximum of 120 days."

It is contended that the provision itself lays down, in clear term, that all leave credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal, or termination. Thus, in view of the fact that compulsory retirement also leads to termination of service, it has to be held, according to the appellant – bank, that the leave of the concerned employee has lapsed, and, therefore, the earned leave equivalent to the emoluments of any



period of the privilege of leave cannot be paid to him. It is urged that the learned Single Judge has erred in holding that compulsory retiree is also entitled to leave encashment. It was urged before the Writ Court that the Indian Bank Association, which is a body consisting of all the Banks and which takes major policy decision, had issued a Circular, in the year 2015, with regard to allowing leave encashment even to the persons, who have been compulsorily retired, but that would not help the writ petitioner-respondent as the subsequent letter of Indian Bank Association cannot be given a retrospective effect.

Per contra, learned Counsel for the writ petitioner respondent has submitted that the circular or the executives decisions are there only to fill up the gaps, which are found in the statute. Though such decision was taken by India Bank Association in the year 2015, that would not be of much relevance as that cannot take the place of statute. If the statue itself is clear, then, there would not be any requirement of placing reliance upon such decision of any Association, which does not have any statutory force. Learned Counsel has placed reliance upon a decision rendered by a Full Bench of Punjab and Haryana High Court rendered in **UCO Bank and Ors. Vs. Anju Mathur [(2013) 1 Law Herald 849 / (2013) 0 Supreme (P & H) 260]** in this regard. The

Full Bench has held as under :

“26. We have also reproduced Regulation 38 of the Officers Regulations, which deals with leave encashment. This regulation states that leave shall lapse in certain circumstances. Proviso thereto, however, provides an explanation and makes a provision for leave encashment in those cases where an officer “retires” from service. The question is as to whether this retirement would mean retirement on attaining the age of superannuation or retirement caused by other modes as well, including LPA-566-2012 – 18 –

compulsory retirement. It cannot be disputed that compulsory retirement occasioned otherwise than by way of penalty would be covered by the proviso and leave encashment would be admissible as in that eventuality also, the officer “retires” from service. However, unlike Regulation 46 of the Officers’ Regulations, the cases where the retirement comes by way of penalty of compulsory retirement, are not excluded. Therefore, when an officer “retires” from service, in whatever manner, he is eligible for leave encashment. In the case of O.P. Garg (supra), this issue was specifically dealt with by this Court in the following manner:

“The petitioner in the present case had been wrongly denied encashment of leave through a careless mis-interpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on



resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.

Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs. 2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs. 20325/- was the second installment received by the petitioner on November 17, 2004 but the second installment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.

In view of the above discussion, this petition is

allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had LPA-566-2012 – 19 –

earned (leave encashment) alongwith interest @ 10% from July 26, 1999 till date of payment.”

27. We agree with the aforesaid reasons. We are, therefore, of the view that respondent would be entitled to leave encashment. RE: FORFEITURE OF EMPLOYER'S SHARE OF PROVIDENT FUND:”

A Division Bench of Delhi High Court, in **L.P.A. No. 693 of 2013 (Dipak Sapra Vs. Punjab National Bank)**, has also taken a similar view. The issue, raised before the Division Bench, was as to whether the compulsory retirement, imposed as a penalty, would disqualify an officer from leave encashment benefits? The Division Bench, after scrutinizing the Regulation 38 of the Service Regulation, has accepted the views expressed by the Full Bench of Punjab & Haryana High Court in **UCO Bank (Supra)**.

We are also in agreement with the views expressed by the Full Bench of Punjab & Haryana High Court in **UCO Bank (Supra)** as well as the Division Bench of Delhi High Court in **Deepak Sapra (supra)**. The submission, made on behalf of the appellants, that compulsory retirement would also amount to termination was the view expressed by a Single Bench of Calcutta High Court in case of **Punjab National Bank v. Jyotirmay Roy**



[APO No. 284/2012, decided on 17.12.2012], which has been noticed by the Division Bench of Delhi High Court in **Deepak Sapra** (supra). In the aforesaid case, the learned Single Judge of Calcutta High Court has held that any wilful act of the employer by which the services of an employee is made redundant and/or comes to an end as a measure of punishment must always be considered to be an order of termination and, therefore, an order of compulsory retirement cannot be made an exception to the aforesaid principle. However, that could not find favour with the Division Bench of the Delhi High Court, in **Deepak Sapra (supra)**, as the Division Bench has held that the opening sentence of Regulation 38 of Service Regulation envisages is under : “lapse of leave save as provided below”, and the first proviso indicates that an officer, who retires from the Bank service, would be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of privileged leave that he had accumulated. Thus, it has come to the conclusion that compulsory retirement, not having been specifically differentiated in the Regulation 38 of Service Regulation from retirement, cannot be taken as a separate clause to deny an employee of his leave encashment.

According to us, since the Regulations, which was framed after prior consultation and the approval of Central



Government, has made no distinction between one class of retirees and another, such distinction cannot be made by the appellants. There is no dispute about the fact that cessation of service as a result of retirement can be on the occurrence of following contingencies – (i) attainment of superannuation; (ii) option by the employee to voluntarily retire from the service, (iii) retirement of an employee upon imposition of a penalty or exercise by the employer upon imposition of a penalty and (iv) exercise by the employer of an option to compulsorily retire the employee as a dead wood. However, in each one of them, in terms of Regulation 38 of Service Regulation, employee concerned would be entitled to leave encashment benefit, because in the case of those imposed with penalty of compulsory retirement, there is no dispute that pension – as applicable and other terminal benefits are admissible unless the order of punishment lays down otherwise.

The Apex Court, in the case of **the State of Jharkhand Vs. Jitendra Kumar Srivastav [(2013) 12 SCC 210]**, has held that retiral benefits are property, being vested rights, which cannot be deprived of without authority of law.

In these circumstances, it has to be held that, to single out one class of retirees, i.e., those imposed with compulsory retirement and deny them the benefit of leave encashment, would be

contrary to intent of the Regulations.

Thus, we agree with the views, expressed by the learned Single Judge in the judgment, under appeal, that in the absence of specific regulation, depriving one class of retirees (such as, those imposed with penalty of compulsory retirement) leave encashment benefits is unwarranted and not supported by law. This issue is also, accordingly, decided against the appellants.

In view of the aforesaid discussions, in our view, this appeal has to fail on both counts and, accordingly, the same is dismissed.

(Dr. Ravi Ranjan, J.)

I.A. Ansari, CJ : I agree

(I.A. Ansari, CJ)

Spd/-

AFR/NAFR	AFR
CAV DATE	22.09.2016
Uploading Date	29.10.2016
Transmission Date	NA