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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11801/2016

ANIL MALHOTRA

..... Petitioner

Through: Mr. N.C. Gupta, Adv.

versus

BANK OF BARODA AND ANR.

..... Respondent

Through: Ms.Saakshi Agrawal, Govt. Pleader for R-1/UOI
Mr. Jagat Arora, Adv. for R-2

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**O R D E R**

**% 08.08.2017**

1. The present petition has been filed with the following prayers:-

> *"It is most respectfully prayed that this Hon'ble court may kindly be pleased to:*
>
> *1. Issue a writ of mandamus or any other appropriate writ, orders or directions to the Respondents to pay or arrange to pay interest to the petitioner on the amount of leave encashment for the period of delay involved from the date reckoned from the date of superannuation till date of actual payment with compound effect.*
>
> *2. Grant any other relief including damages and legal expenses as this Hon'ble may kindly be pleased under the facts and circumstances of the case."*

2. It is the submission of the learned counsel for the petitioner that the disciplinary proceedings were initiated against the petitioner on June 17, 2014. On June 30, 2014 he attained the age of superannuation. In terms of Regulation 20(3)(iii) of the Bank of Baroda Officers Service Regulations, 1979, the disciplinary proceedings continued, which culminated in a final order dated May 27, 2016 whereby a penalty of compulsory retirement was imposed. On October 21, 2016, Leave Encashment was paid to the petitioner.

3. It is his submission that the petitioner was entitled to Leave Encashment on the date he attained the age of superannuation i.e June 30, 2014 and there being a delay of more than two years, the petitioner is entitled to the interest on the said amount. He would draw my attention to a circular dated July 30, 2016 (page 121 of the paper book) to contend that the respondent No.1 itself has issued instructions to extend the benefit of encashment of privileged leave to employees, who were compulsorily retired from November 27, 2000 onwards.

4. That apart, he would also draw my attention to a circular dated December 14, 2016 of the respondent No.1 to contend that the Bank has decided that it will make payment of interest at the then prevailing FDR

interest rate applicable for one year or 10% whichever is less for the entire delayed period for payment of Leave Encashment to those employees who have compulsorily retired or were/are paid Leave Encashment following decision of payment of Leave Encashment to compulsorily retired employees conveyed vide circulars dated June 01, 2015 and July 30, 2016. He states, it is clear that the Leave Encashment need to be paid on the date of superannuation and having not paid from the date of superannuation, interest need to be paid.

5. On the other hand, learned counsel for the respondent No.1 would defend the claim against the Bank by stating that on the date of superannuation, the petitioner cannot be said to have retired, inasmuch as in terms of Regulation 20(3)(iii), the proceedings continue even thereafter. The proceedings culminated in the final order of May 27, 2016. It is on the said date, the petitioner, who was compulsorily retired, was entitled to the Leave Encashment and not before that. The Leave Encashment having been paid on October 21, 2016, there was no delay on the part of the respondent No.1 to release the same. She would rely upon the judgment of the Coordinate Bench of this Court in ***S.K. Kalra v. Union of India and Ors W.P.(C) No. 11160/2016 and connected writ petitions decided on February***

***20, 2017*** wherein identical issue arose, were dismissed by this Court saying that there is no delay in payment of service benefits and the relief of interest, cannot be granted.

6. Having heard the learned counsel for the parties, there is no dispute, on the date of superannuation of the petitioner i.e June 30, 2014, disciplinary proceedings were pending against him. There is also no dispute, in terms of Regulation 20(3)(iii), the proceedings would continue as if the petitioner was in service until the proceedings are concluded and final order is passed in respect thereof. The Regulation also contemplates, the concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF. The final order was passed on May 27, 2016 when he was imposed a penalty of compulsory retirement. On the said date, it became clear that the penalty was of compulsory retirement, which had made the petitioner entitled to the benefits of Leave Encashment in terms of circular dated June 01, 2015, whereby it was decided by the respondent Bank that those employees, who were compulsorily retired with effect from April 30, 2015 will be eligible for Leave Encashment not exceeding 240

days of privileged leave. Vide a subsequent circular dated July 30, 2016, the date of April 30, 2015 was changed to November 27, 2000. So, before June 01, 2015 there was no occasion for the Bank to release the Leave Encashment to the petitioner, who attained the age of superannuation on June 30, 2014. It appears, the petitioner has also not protested the non release of Leave Encashment to him on the date of his superannuation on June 30, 2014. Be that as it may, Rule 38 (page 122 of the paper book), which relates to lapse of leave inter-alia stipulates all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination. The first proviso to the said Regulation also stipulates where an Officer retires from a Bank, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of privileged leave that he accumulated.

7. The issue now arises is, whether the retirement of the petitioner shall relate back to the date June 30, 2014 or it shall be May 27, 2016. For this, the answer lies in the order of penalty dated May 27, 2016, which does not stipulate the imposition of penalty of compulsory retirement from the date of his attaining the age of superannuation. There cannot be any other interpretation as till such time the proceedings are concluded, he is in service

for the purpose of those proceedings. Any effect of the penalty of compulsory retirement from the date of superannuation would be at variance with Regulation 20(3)(iii).

8. A further reason is, till such time a final order is passed, it is not known whether the employee concerned is compulsorily retired, dismissed, removed etc. In a given case, dismissal would have resulted in forfeiture of Leave Encashment. Till such time, a penalty is imposed, that too of compulsory retirement, a right has not accrued to an Officer to claim Leave Encashment. Hence, the plea of the learned counsel for the petitioner is liable to be rejected. During the submissions, the learned counsel for the petitioner has made a half-hearted plea that all the employees who have been imposed penalty of compulsory retirement, have been given leave encashment from the date of superannuation. On a specific query, whether any averment has been made in the writ petition, the answer was in the negative. Hence, this plea need to be rejected.

9. It is an undisputed fact that Leave Encashment was released on October 21, 2016. There was, no abnormal delay in releasing the same, as administrative process does take time. That apart, even the petitioner had invoked the appellate remedy before the Appellate Authority. The reliance

placed by the learned counsel for the respondent No.1 on the judgment is justified but I find one aspect, which appears to have not been pleaded before the Coordinate Bench, was the circular dated December 14, 2016, which inter-alia stipulates that Bank is obliged to make payment of Leave Encashment within one month from the date of cessation to its eligible employees who are ceasing from Bank's service on superannuation or VRS or compulsorily retirement etc and efforts should be made to pay Leave Encashment within one month from the date he/she becomes eligible for payment of Leave Encashment. Even though, the circular does not stipulate payment of interest during that period but the Bank is bound by its own circular, inasmuch as if within one month, the Leave Encashment is not paid, for a period beyond one month, the Officer is entitled to interest in terms of that circular i.e prevailing FDR interest rate (simple) applicable for one year or 10% whichever is less. The petitioner shall be entitled to the interest for four months and nothing more. The same shall be paid to the petitioner within two months. Ordered accordingly. The petition is disposed of.

**V. KAMESWAR RAO, J**

**AUGUST 08, 2017**/*ak*