

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

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Date of decision: April 05, 2021

+ W.P.(C) 625/2016

V K MALHOTRA

..... Petitioner

Through: Mr. G.S. Chaturvedi and
Mr. S. Chaturvedi, Advs.

versus

UNION BANK OF INDIA AND ORS

..... Respondents

Through: Mr. O.P. Gaggar and
Mr. Sachindra Karu, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

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

“In view of the foregoing submissions, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(a) issue writ in the nature of certiorari or any other writ(s), order(s) or direction(s) quashing the charge-sheets dated 11.11.2009 and 31.05.2013 as also consequent illegal inquiry and Report dated 5.2.14 and orders dated 06.01.2015 and 28.05.2015 passed by the Respondent Nos. 2 and 3 as also show-cause notice dated 23.10.2015;

(b) issue writ in the nature of mandamus or any other writ(s), order(s) or direction(s) directing the Respondents to grant full pension as also other retiral benefits including leave encashment and gratuity w.e.f. 12.12.09 with interest;

(c) cost of this Writ Petition may kindly be also allowed in favour of the Petitioner and against the Respondents since the Petitioner has been suffering due to malafide and illegal actions of the Respondents;

(d) pass such other or further order(s) as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and in the interest of justice."

2. The brief facts as noted from the petition are, three chargeheets have been issued to the petitioner, the same being dated November 29, 2008, November 11, 2009 and May 31, 2013.

3. The case of the petitioner and so contended by his Counsel Mr. G.S. Chaturvedi is that the first chargesheet had resulted in an order of dismissal from service vide order dated December 3, 2009 served on the petitioner on December 11, 2009, which is 20 days before his actual superannuation on December 31, 2009. The petitioner appealed against the order of dismissal dated December 3, 2009 vide his appeal dated January 9, 2010 which was accepted by the Appellate Authority and the penalty of dismissal from service was converted into penalty of compulsory retirement vide order dated March 6, 2012. It is contended by Mr. Chaturvedi that the petitioner did not receive pension in the intervening period between December 12, 2009 to March 6, 2012 nor encashment of earned leave and gratuity was paid though, he stood compulsory retired.

Mr. Chaturvedi contended that the chargesheets dated November 11, 2009 and May 31, 2013 were decided in terms of common order January 6, 2015, whereby it was decided to withhold permanently pension of the petitioner. He submitted that this order was passed by the Disciplinary Authority by showing disagreement with the findings of inquiry officer where honesty and integrity of the petitioner is not in doubt, was overruled. According to Mr. Chaturvedi, the Disciplinary Authority was required to issue a show-cause notice along with the note of disagreement before inflicting the penalty on the petitioner. In this regard, he has relied upon a Judgment of the Supreme Court in the case of ***Punjab National Bank v. Kunj Bihari Mishra (1998) 7 SCC 84.***

4. Mr. Chaturvedi would attack the two chargesheets and consequent inquiry resulting in the order of withholding of pension permanently by contending that no inquiry could have been conducted after the dismissal / compulsory retirement, of the petitioner. According to him, there is no provision in the Rules of the Bank to conduct enquiry in a chargesheet after dismissal / compulsory retirement of the petitioner nor the same has been justified by the respondents in their counter-affidavit. As such if employment of the petitioner had come to an end on December 11, 2009, consequent to service of order dated December 3, 2009, no enquiry proceedings in the said chargesheet could be continued, that too after a period of almost 4 years on May 31, 2013. He submitted that even otherwise, the respondents have not explained the delay in initiating the inquiry proceedings after 4 years of cessation of service whereby grave prejudice has been caused to the petitioner.

In this regard, he has relied upon the Judgment of this Court in the case of *N.S. Bhatnagar v. Union of India (2001) 92 DLT 301 (DB)*. He also relied upon Regulation 48 (2) of the Pension Regulations of the Bank in support of his submission that no proceedings could be instituted against an Officer after cessation of service for events which have taken place more than 4 years before the issuance of the charge sheet. In this regard, he has relied upon the Judgment of the Division Bench of this Court in the case of *Punjab and Sindh Bank v. Nand Lal Phatnani, LPA 674-677/2015*.

5. On the plea taken by Mr. O.P. Gaggar, learned counsel appearing for the respondent Bank that this petition is not maintainable as this Court has no territorial jurisdiction is concerned, Mr. Chaturvedi would submit that as some of the proceedings in the inquiry have been held within the territorial jurisdiction of this Court in Delhi and the petitioner having settled in Delhi, after his service in the Bank, this Court will have the jurisdiction. In this regard, he has relied upon the Judgment of the Supreme Court in the case of *Nawal Kishore Sharma v. Union of India (2014) 9 SCC 329* wherein the Supreme Court has in respect of an employee, the place where he is settled and where several letters / responses were received by him, held, shall have jurisdiction. Mr. Chaturvedi has also relied upon the Judgement of this Court in the case of *Amarjeet Singh v. Punjab and Sindh Bank (2014) 140 DRJ 162* in support of his submission that if the petitioner has been dismissed and then compulsory retired, no proceedings could have taken place.

6. On Gratuity he stated that the case of the respondents that the acts of the petitioner amount to moral turpitude by relying upon Section 4 (6)(b)(ii) on Payment of Gratuity Act, 1972 is misconceived, as per its plain language the acts must amount to offence and for the same, it is necessary that criminal prosecution must have been initiated and the concerned person must have been convicted for the same. In this regard, he has relied upon the Judgment of the Supreme Court in the case of ***Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Ors.*** (2006) 11 SCALE 624 and ***Union Bank of India v. C.G. Ajay Babu and Anr.*** Civil Appeal No. 8251/2018. Similarly, he referred to the Judgment of this Court in the case of ***M/s. Cement Corporation of India v. V.K. Arora and Ors.*** W.P.(C) 5474/2013 and ***General Manager, UCO Bank v. Jitender Kumar Srivastava*** W.P.(L) 42/2015 of Chattisgarh High Court. In the end, he also stated that the petitioner is also entitled to encashment of leave in terms of the Judgment of this Court in the case of ***Deepak Sapra v. Punjab National Bank, LPA 693/2013.*** He presses for the reliefs prayed for in the present petition.

7. On the other hand, Mr. O.P. Gaggar, learned counsel for the respondent Bank has taken a preliminary objection on the maintainability of the writ petition before this Court. It is his case that the allegations, which were subject matter of the chargesheets, pertain to his tenure as a Regional Manager at Jabalpur and Jalandhar in the States of Madhya Pradesh and Punjab respectively. That apart, when the penalty of dismissal was converted into compulsory retirement, the petitioner was working in the Central Office of the respondent Bank at Mumbai. The Disciplinary

Authority of the petitioner is the Executive Director and Appellate Authority is the Chairman and the Managing Director of the respondent Bank who are posted in the Central Office of the respondent Bank at Mumbai. The Field General Manager of the respondent Bank at New Delhi, who held some proceedings in Delhi is neither the Disciplinary Authority nor the Appellate Authority. He also stated that merely because the Field General Manager has held inquiry proceedings for some days in New Delhi instead of Jabalpur and Jalandhar, shall not confer jurisdiction on this Court. In this regard he has relied upon the Judgments of the Supreme Court in the cases of *M/s. Kusum Ingots and Alloys Ltd. v. Union of Ors.* 2004 6 SCC 254 and *Eastern Coal Field Ltd. v. Kalyan Banerjee* (2008) 3 SCC 456 to contend that jurisdiction under Article 226 has also to be decided parametria similar to Section 20 of the CPC. That apart on merit, it is his submission that the petitioner has been held guilty in the departmental enquiry as per applicable service rules. He has availed the remedy of appeal under the said regulations. It is a settled law, by this Court and the Supreme Court, that in the matters of departmental enquiry, *Wednesbury* principle has to be applied. In such cases, the decision making process until and unless is found to be in gross violation of rules of procedure or failure to observe principles of natural justice, the conclusion of the disciplinary authority cannot be interfered with. He stated that petitioner has not even pointed out any breach of principles of natural justice or the rules of procedure applicable to him in the petition. He in support of his submission has relied upon the Judgment of the Supreme Court in the case of *B.K.*

Chaturvedi v. Union of India AIR 1996 SC 484 According to Mr. Gaggar, the plea of Mr. Chaturvedi that the chargesheet dated May 31, 2013 was with regard to certain events which had taken place four years preceding the issuance of the chargesheet is prima facie wrong for the reason that one of the chargesheets was issued on September 11, 2009. The petitioner had meted out punishment of dismissal from service in the earlier disciplinary proceedings, but the same was changed to compulsory retirement by the Appellate Authority. Due to reduction in punishment in the Appeal, the Bank decided to pursue the chargesheet dated September 11, 2009. A show cause notice was issued initiating disciplinary proceedings in other chargesheet dated May 31, 2013 on June 26, 2009 and the inquiry proceedings were held for the two chargesheets. He justifies the penalty of permanent stoppage of pension keeping in view the charges framed and proved in the departmental enquiry. Mr. Gaggar would contest the submission made by Mr. Chaturvedi that the chargesheet dated September 11, 2009 is extinguished, when the petitioner had been punished in a prior chargesheet by dismissal, which later converted into compulsory retirement, as untenable. The subsequent chargesheet was pending and had not been withdrawn. When he was punished with dismissal, the same was not required to be proceeded with. But when the punishment was reduced to compulsory retirement, by the Appellate Authority, the Bank had pursued the other chargesheet also. In so far as the chargesheet dated May 31, 2013 is concerned, he stated that the same is in continuation of the show-cause notice dated June 26,

2009 issued to the petitioner and hence the bar of four years would not be applicable.

8. In the end, he stated that the petitioner was given full opportunity to defend himself. The petitioner was a high-ranking officer of the Bank, who held high responsibility position, but despite that he was involved in serious irregularities which resulted in the permanent withholding of the pension. He stated, the penalty commensurate with the charges framed and proved against the petitioner. He has relied upon the Judgment of the Supreme Court in the case of ***Regional Manager v. Nikunj Bihari Patnaik JT 1996 4 SCC 457*** and ***CMD UCO Bank v. P.C. Kakkar 2003 4 SCC 364*** wherein it has been categorically held that irregularities while granting advances are ground for removing the Bank officer. He seeks the dismissal of the writ petition.

9. Having heard the learned Counsel for the parties, the first issue that needs to be decided is the issue of maintainability of this petition in this Court as raised by Mr. Gaggar. Mr. Gaggar had stated that the subject matter of the charges are with regard to the petitioner's functioning in Jabalpur and Jalandhar. The Disciplinary and the Appellate Authority both are posted in the Central Office of the Bank in Mumbai. Hence, no part of cause of action has arisen in Delhi and this Court has no territorial jurisdiction to entertain the petition. I am unable to agree with the submission of Mr. Gaggar for the reason as conceded by Mr. Gaggar that some proceedings in the inquiry were held in Delhi. It is the outcome of the proceedings, which has been challenged by the petitioner in this writ petition. That apart, what is important is the fact that the petitioner after he

ceased to be an employee of the Bank, has settled in Delhi and various communications like the one dated February 20, 2014, whereby the inquiry report was sent to the petitioner and also show-cause notice dated October 23, 2015 for forfeiting the gratuity were sent to the petitioner's address in Delhi. In other words, a part of cause of action has arisen in Delhi. Mr. Chaturvedi is justified in relying upon the Judgment in the case of **Nawal Kishore Sharma** (*supra*) which is applicable to the facts of this case. The Supreme Court in Para 17 of the said Judgement has held as under:

*“17. In **Om Prakash Srivastava vs. Union of India and Another** (2006) 6 SCC 207, answering a similar question this Court observed that on a plain reading of Clause(2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 this Court observed:-*

“7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.”

18. In the case of **Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax and Others**, (2010) 1 SCC 457, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

“9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

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11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation

procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed.”

19. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

20. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him

on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.”

10. Even the Judgment of the Supreme Court in the case of ***M/s. Kusum Ingots and Alloys Ltd. (supra)*** as relied upon by Mr. Gaggar shall not be of any help to him for the simple reason even in the said Judgment, the Supreme Court held if a part of cause of action has arisen within the territorial limits of a High Court, that High Court will have the jurisdiction. Even the reliance placed by Mr. Gaggar on the Judgment of the Supreme Court in ***Eastern Coal Field Ltd. (supra)*** is misplaced, as the Judgment is distinguishable on facts inasmuch as, it was the conclusion of the Supreme Court that entire cause of action arose in State of Jharkhand and merely because, the Head office of the appellant was situated in State of West Bengal, by itself will not confer jurisdiction upon the Calcutta High Court. It is not such a case here, in view of my findings

above. Hence, the plea of Mr. Gaggar that this Court lacks territorial jurisdiction is rejected.

11. Now coming to the plea of Mr. Chaturvedi that the chargesheets dated November 11, 2009 and May 31, 2013 could not have been issued as no right was kept open for proceeding against the petitioner, upon imposition of penalty of dismissal which was converted into compulsory retirement and also no such stipulation exists in the regulation of the respondent Bank is not appealing. Regulation 48 (1) of the Pension Regulations contemplates that departmental proceedings instituted while the employee was in service, shall after the retirement of the employee be deemed to be proceedings under the Regulations and shall be continued by the authority by which they were commenced in the same manner as if the employee has continued in service. Regulation 48 (1) is reproduced as under:

“48. RECOVERY OF PECUNIARY LOSS CAUSED TO THE BANK

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of this service : Provided that the Board shall be consulted before any final orders are passed:

Provided further that departmental, proceedings, if instituted while the employee was in service, shall after the retirement of the employee, be deemed to be proceedings under these Regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

12. So, the aforesaid regulation is clear that the departmental proceedings initiated before retirement shall continue after the retirement. The case of the respondent Bank, that in view of the penalty of dismissal, the chargesheet dated November 11, 2009 was kept in abeyance and was only re-opened after the penalty was converted into compulsory retirement is appealing. The plea of Mr. Chaturvedi is liable to be rejected.

13. Now coming to the issue whether the chargesheet dated May 31, 2013 could have been issued to the petitioner with respect to events, which took place more than four years before such issuance is concerned, in this regard it is necessary to reproduce the statement of allegations as framed against the petitioner on May 31, 2013, as under:

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STATEMENT OF ALLEGATIONS

The following acts of omission have been reported on the part of Shri V.K. Malhotra, Dy. General Manager (since compulsorily, retired), Central Office, in the account of M/s Satyam Cottex with Phagwara branch during his tenure as Dy. General Manager, Regional Office, Jalandhar:

In August 2007, the account of M/s Satyam Cottex, a proprietorship firm (Prop. Smt. Renu Sharma wife of Shri Manoj Sharma) was taken over from Bank of Baroda with deviation, as its assessed credit rating was CR-5 instead of CR-4. The firm was enjoying Cash Credit facility of Rs.80.00 lacs and a Term Loan of Rs.5.00 lacs with Bank of Baroda, Phagwara Branch. Prior to this, the firm was enjoying credit facilities of Rs.20.00 lacs from Canara Bank, Phagwara Branch. It was evident from the statement of account of the firm with Bank of Baroda, which was enclosed with the proposal that it had remained

overdrawn for nearly 270 days during a period of one year. The Term Loan was also overdue at the time of takeover. These facts were pointed out by Regional Office itself before sanction of the limit in terms of letter No: ROJ:CR:1680:2007 dated 13.07.2007 and no clarification had been offered by the branch for this adverse feature. The firm was sanctioned Cash Credit Limit of Rs.100.00 lacs and fresh Term Loan of Rs.15.00 lacs apart from taking over the Term Loan of Rs.4.55 lacs.

While carrying out credit rating exercise of the firm, the loans availed by the proprietor along with her husband as also by its sister concerns were not taken into consideration. Although the proposal for sanction stated that the firm was an SSI unit, it was revealed that the firm had only applied for SSI status. The power connection to the unit was also found to be in the name of an associate firm.

The specific reasons for shifting of the account to our Bank were not ascertained as it was enjoying credit facilities at a cheaper rate of 13% at Bank of Baroda as compared to our rate of 14%. The satisfactory dealing certificate of the firm and its associate concerns was not obtained from the existing bankers before sanction but was stipulated in the terms and conditions. The excess over limit at Bank of Baroda was partly adjusted by creating overdraft in the CD account of the firm with the branch, while taking over the account.

It is reported that Shri Malhotra had scouted the said account and despite various adverse features, the sanction / takeover of the credit limits was ratified by him.

Even before the takeover had been approved, Shri Malhotra advised the branch to accommodate the firm till regular limits were sanctioned. As such clean

overdraft was allowed by the branch in the C.D, account of the firm even before the takeover of the account. As per letter No: PHG:116:07 dated 16.08.2007, Shri Harmesh Singh, Accountant of the branch was permitted to allow overdraft of Rs.4.00 lacs in the account.

The account was taken over even though the Credit Rating of the firm was below the acceptable level, approved plan of the unit was not available, the valuation of the property stipulated as collateral was not from the approved valuer, SSI registration was not available and the NWC of the firm was inadequate even for the existing limit with Bank of Baroda.

Immediately after sanction of the limit, a request for substitution of one of the properties was placed before Regional Office stating that it was already mortgaged to Bank of Baroda against the loan availed by Shri Manoj and Smt. Renu Sharma. The said fact was not reported by the branch in its proposal for sanction of limits. However, the reasons for not reporting the same in the loan proposal were not ascertained from the branch. The factory inspection report was not called for from Manager (Tech.), who inspected the unit on 21.07.2007. The unit was also not got inspected at the time of enhancement of proposal in March 2008.

Though the branch persisted in allowing huge overdrafts, purchasing local and outstation cheques, no effective steps were taken to curb the practice except sending letters to the branch instructing them to desist from such practice.

The proposal for sanction of adhoc limit of Rs.40.00 lacs was forwarded by the branch to Regional Office under cover of letter No: GS:ADV:128:07 dated 25.10.2007. However, the same was not sanctioned.

Subsequently, the branch submitted a proposal recommending enhancement of limit from Rs.100.00 lacs to Rs.200.00 lacs on 19.03.2008. The enhancement was approved by Shri Malhotra, despite the fact that the irregularities persisted in the account and the collateral was not sufficient to cover the exposure.

The account was not monitored properly and it turned NPA on 31.12.2008 involving the Bank to a huge monetary loss. It is therefore evident that Shri Malhotra had not exercised due diligence while scouting the account and ratifying the sanction / take over of limits in the said account.

In view of above, Bank is likely to suffer monetary loss to the extent of Rs. 226.02 lacs alongwith interest thereon from 01.12.2008.

Further on 28.09.2007, an amount of Rs.81.00 lacs was credited to the Savings Bank (GL Head) by debiting IBP - Cheque Purchase Head at the branch. This was done at the instructions of Shri Maihotra to meet the shortfall of the Region. The targets set for the branch had already been achieved. However, the branch v/as informed that the said entry could be passed as the branch was then not under CBS.”

14. From the aforesaid, it is clear that the subject matter of allegations primarily relates to certain credit facilities sanctioned by the petitioner in the year 2007 which ultimately became NPA in the year 2008. Both the events had taken place four years before the date of issuance of chargesheet which I have reproduced above.

15. The law in this regard is well settled by the Judgment of this Court in the case of *Nand Lal Phatnani (supra)*, which is a Judgment in intra-Court appeals from the Judgment of this Court

wherein the chargesheets were quashed on this ground only. The Division Bench upheld the Judgment by holding as under:

“The position therefore would be that against serving employees of the appellant bank disciplinary proceedings can be initiated for acts of omission and commission if they constitute a misconduct irrespective of limitation, but with respect to employees who have superannuated from service the disciplinary proceedings cannot be initiated if they relate to events which took place more than 4 years before the institution of the disciplinary proceedings.

16. Even in a recent Judgment dated February 1, 2021 deciding batch of petitions, the lead case being **W.P.(C) 2846/2017** title as **Baljit Singh Handa v. Punjab and Sindh Bank** this Court dealing with a similar issue, has in Paras 67 to 69 held as under:

“67. The plea of Mr. Vivek Singh is primarily based on the Judgment of this Court in the case of Harpreet Singh Makkar (supra) which has been upheld by the Division Bench of this Court in the case titled as Punjab and Sindh Bank (supra). It was the submission of Mr. Singh that as the subject matter of the departmental proceedings initiated against the petitioners is primarily related to the fact that the petitioners herein have sanctioned the cash credit facilities for two accounts (in W.P.(C) 2846/2017), sanction of enhancement of ODP limits, sanction of BG limit (in W.P.(C) 3910/2017 and W.P.(C) 3915/2017) before their respective retirements, which is beyond the period of four years from the date of the issuance of the impugned charge sheets in the writ petitions as the charge sheets could not have been issued in view of Regulation 48(2) of the Pension Regulations.

68. On the other hand, the submission of Ms. Bajaj has been that it is not the subject matter of the charge which would be relevant to compute the period of limitation of 4 years under Regulation 48(2) of Pension Regulations, but the ‘event’ of the credit facilities / accounts of the borrowers becoming NPAs, shall be the relevant date for

computing the limitation of 4 years. In other words, it was her submission that it is the 'acts' of the petitioners which led to the accounts of the borrowers turning NPAs which triggered the initiation of the departmental proceedings against the petitioners. In support of her submission, she has sought to draw a distinction between the 'act' committed by the petitioners and the 'event' of accounts turning NPA (s). In substance, it is her plea that the 'event' of the accounts turning NPAs being within a period of 4 years preceding issuance of the charge sheets to the petitioners, the limitation as prescribed in Regulation 48(2) of Pension Regulations will not come into play.

69. I am not in agreement with the submission made by Ms. Bajaj for the simple reason that the word 'event' as stipulated in Regulation 48 (2) of Pension Regulations has to be seen from the perspective of the charges framed against the petitioners herein. As noted from the charges reproduced above, the subject matter of the same being that the petitioners prior to their retirement and also preceding the period of more than 4 years from the date of issuance of charge sheets have recommended (the dates of sanctioning being February 13, 2012, March 30, 2012 in respect of W.P.(C) 2846/2017; August 29, 2011, September 29, 2011, March 30, 2012 and June 14, 2012 in respect of W.P.(C) 3910/2017; and August 30, 2011, September 29, 2011, April 2, 2012 and June 14, 2012 in respect of W.P.(C) 3915/2017) sanction of cash credit facilities, enhancement of ODP limit and sanction of BG limit. The accounts of the borrowers becoming NPA are not the subject matter of the allegations in their respective charge sheets. Hence, the facilities / accounts sanctioned by the petitioner may have turned NPAs but since the very subject matter of the charges is with regard to sanction given by the petitioners for such loans, the plea is unsustainable. It can also be said that the facilities / accounts turning NPAs can be because of the borrowers having failed to re-pay the loans / credits availed and such a charge surely cannot be imputed against the petitioners. If that be so, the limitation of four years has

to be necessarily seen from the date when the sanction was given by these officers / petitioners for various facilities which resulted in the accounts becoming NPA.”

17. The law on the issue is very clear. No chargesheet can be issued for events which had taken place four years before the issuance of the chargesheet.

18. The plea of Mr. Gaggar, that a show-cause notice was issued on June 26, 2009 and the chargesheet is in continuation of the same and as such the limitation of four years shall not be attracted. I am not impressed by the submission. The law is very clear that a disciplinary proceeding is said to have been initiated with the issuance of chargesheet, which in this case was initiated on May 31, 2013, so the four years have to be seen on that day. The show-cause notice dated June 26, 2009 cannot be construed as an initiation of disciplinary proceeding nor it will extend the limitation of four years.

19. In view of the position of law, noted above the chargesheet dated May 31, 2013 needs to be quashed. It is ordered accordingly.

20. There is no denial to the fact that vide order dated January 6, 2015, the disciplinary authority has passed a common order on the two chargesheets dated November 11, 2009 and May 31, 2013 imposing penalty of withholding of pension permanently. The chargesheet dated May 31, 2013 having been quashed, the order dated January 06, 2015 is also liable to be quashed. It is ordered accordingly. It needs to be considered, whether the single chargesheet dated November 11, 2009 shall entail the same penalty or a different one. Surely, this Court cannot, vary the penalty in

exercise of its jurisdiction under Article 226 of the Constitution of India. The matter is required to be relegated back to the Disciplinary Authority to consider the record of the chargesheet dated November 11, 2009 including the inquiry report and the response of the petitioner (if any) and pass a fresh order. This shall be done within twelve weeks from today.

21. In so far as the plea of Mr. Chaturvedi, that the denial of gratuity by the respondent Bank on the ground that the allegations / charges proved against the petitioner are of very serious / grave in nature, amount to acts involving moral turpitude, as illegal, is concerned, there is no dispute that no criminal case was initiated against the petitioner for his acts of omission and commission by the respondent Bank. In the absence of initiation of a criminal case, there is no conviction of the petitioner for an offence involving moral turpitude. Hence, there is no justification for forfeiture of gratuity on the said ground. Mr. Chaturvedi is justified in relying upon the Judgement of the Supreme Court of the Supreme Court in ***Jaswant Singh Gill (supra)*** wherein in Para 14, the Supreme Court has held a under:-

“14. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non- obstante clause vis-`-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down

thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant. Clause (b) of Sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.

(emphasis supplied)

22. Even in the case of ***Union Bank of India v. C.G. Ajay Babu*** (*supra*), the Supreme Court by relying upon *Jaswant Singh Gill* (*supra*) has in Paras 18 to 20 has held as under:

“18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant- Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct

leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

19. In Jaswant Singh Gill v. Bharat Coking Coal Limited and others, it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-Section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted.

“13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the (2007) 1 SCC 663 Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent

I was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.”

20. *In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the “misconduct proved against you amounts to acts involving moral turpitude”. At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law.”*

(emphasis supplied)

23. The case of the petitioner is squarely covered by the ratio of Judgments of the Supreme Court in the aforesaid two cases. Hence, the forfeiture of the gratuity by the respondent Bank need to be set aside, it is ordered accordingly. The petitioner shall be entitled to gratuity. The same shall be released with interest fixed @ 9% per annum.

24. In so far as the plea of Mr. Chaturvedi that even the leave encashment cannot be stopped / withheld / forfeited by relying upon the Judgment of this Court in **Deepak Sapra (supra)** is concerned, the respondent Bank has not justified its action by relying upon any regulation. Mr. Chaturvedi is justified in relying upon **Deepak**

Sapra (supra) wherein the Division Bench of this Court with respect to an employee who worked in Punjab National Bank and was compulsory retired had granted the benefit of leave encashment by holding in Para 8 as under:

“8. Thus, in respect of all categories of retirees, the first proviso states that such employees would be eligible to payment of leave encashment benefits. Advisedly, the regulation which was framed after prior consultation with and approval of the Central Government made no distinction between one class of retirees and another. Indeed there is no dispute about the fact that the cessation of service as a result of retirement can be on the occurrence of three contingencies - attainment of superannuation; option by the employee to voluntarily retire from the service, and the third, retirement of an employee upon imposition of a penalty or exercise by the employer of an option to compulsorily retire the employee on this attaining a certain age or having served for a certain number of years, in public interest. The first proviso makes no distinction between one class of retirees and another. In other words, each one of them, in terms of Regulation 38 of the 1979 Regulations is entitled to leave encashment benefit. In the case of those imposed with penalty of compulsory retirement, there is no dispute that pension – as applicable and other terminal benefits are given. In these circumstances, 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 plain intent of Regulation 38 of the 1979 Regulations. This Court is clear that the first part of the learned Single Judge’s reasoning that he preferred and relied upon the bank’s circular of 18.01.2001 is clearly erroneous. That circular flies in the face of the first proviso to Regulation 38 of 1979 Regulations and could not have added words as it sought to, in the

present instance. Another reason which persuades us to hold as we do, i.e. to say that compulsory retirees would be entitled to leave encashment benefits is that singling-out such class of employees for denial for one specific type of retirement benefit is also arbitrary and furthers no rationale, having regard to the express terms of Regulation 38 of the 1979 Regulations.”

(emphasis supplied)

25. I have not been shown any rule, which deny the payment of leave encashment on imposition of penalty of compulsory retirement. The petitioner shall be entitled to benefit of leave encashment. The same shall be released with interest @ 9% per annum.

26. A plea has been raised by Mr. Chaturvedi that the petitioner has been denied pension between the period, December 12, 2009 till March 06, 2012. No justification has been given by the respondents in their counter-affidavit in that regard. Once the penalty of the petitioner has been converted into compulsorily retirement, the same shall relate back to the date of dismissal and the petitioner shall be entitled to pension from the said date, i.e., December 12, 2009, (the date when the dismissal order had come into effect). The arrears of pension shall also be paid to the petitioner till March 06, 2012 with interest @ 9% per annum. The benefit of the pension, beyond January 6, 2015 shall be regulated by the order to be passed by the Disciplinary Authority in terms of my direction in Para 19 above. The petitioner shall be at liberty to challenge the order to be passed by the Disciplinary Authority, to his prejudice, in accordance with law.

27. The offshoot of my above discussion is (i) the chargesheet dated May 31, 2013 is quashed; and consequently Disciplinary Authority order dated January 6, 2015 is set aside. The matter is remanded back to the Disciplinary Authority to pass a fresh order on the chargesheet dated November 11, 2009 within twelve weeks from today; (ii) the compulsory retirement of the petitioner relates back to December 12, 2009; (iii) the petitioner is entitled to gratuity as of December 12, 2009 with 9% interest per annum; (iv) the petitioner is entitled to leave encashment as of December 12, 2009 with 9% interest per annum; (v) the petitioner is entitled to the arrears of pension w.e.f December 12, 2009 till March 06, 2012 with interest @ 9% per annum.

28. The petition stands disposed of. No costs.

V. KAMESWAR RAO, J

APRIL 05, 2021/jg

सत्यमेव जयते