



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

Judgment reserved on: 14.09.2022

% **Judgment delivered on: 12.10.2022**

+ **LPA 298/2021**

V. K. MALHOTRA Appellant

Through: Mr. G. S. Chaturvedi and Mr.
Shrinkar Chaturvedi, Advocates.

versus

UNION BANK OF INDIA & ORS. Respondent

Through: Mr. O. P. Gaggar and Mr. Sachindra
Karn, Advocates for respondents.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal is arising out of the judgment dated 05.04.2021, passed in W.P.(C.) No. 625/2016 by which the learned Single Judge has quashed the charge sheet dated 31.05.2013 and in respect of the charge sheet dated 11.11.2009; the matter has been remanded back to the disciplinary authority to pass fresh order.



2. The undisputed facts of the case reveal that the appellant before this Court was appointed as a Clerk in the services of Union Bank of India in 1973 and the last position held by the Appellant was that of General Manager. The Appellant retired after rendering 36 years of service.
3. The Appellant, while he was in service was subjected to disciplinary proceedings and a charge sheet was issued on 29.11.2008 in respect of alleged misconduct relating to sanction of credit facilities to one M/s. Khatri Mineral & Mining Company at Jabalpur while he was serving as Assistant General Manager in the year 2007.
4. The Appellant before this Court was due for retirement on 31.12.2009 and before his retirement a second charge sheet was issued on 11.11.2009. The Appellant in respect of the first charge sheet dated 29.11.2008 was held guilty of the misconduct and the disciplinary authority by an order dated 03.12.2009 inflicted a punishment of dismissal from service. The Appellant did prefer an appeal in the matter on 09.01.2010 and finally the Appellate Authority passed an order dated 06.03.2012 reducing the punishment of dismissal from service to that of compulsory retirement.
5. The undisputed facts of the case make it very clear that the punishment of compulsory retirement was not challenged by the Appellant while filing the writ petition
6. It is pertinent to note that the third charge sheet was also issued after the retirement of the Appellant on 31.05.2013 and the competent authority keeping in view the Union Bank Of India Officer Employees' (Discipline and Appeal) Regulations, 1976 proceeded ahead in the matter and the



Enquiry Officer submitted a report on 20.02.2014. A copy of the report was forwarded to the Appellant and, thereafter finally an order was passed on 06.01.2015 withholding the monthly pension payable to the Appellant keeping in view the Regulation 43 of the Union Bank of India Officer (Employees') Pension Regulations, 1995.

7. The Appellant being aggrieved by the order dated 06.01.2015 preferred an appeal on 11.03.2015 and the Appellate Authority by an order dated 28.05.2015 has dismissed the appeal keeping in view the gravity of lapse on the part of the Appellant and the order of the Disciplinary Authority dated 06.01.2015 was upheld. The Appellant, in the year, 2016 preferred a writ petition which is the subject matter of the present LPA on 19.01.2016, praying for the following reliefs in W.P.(C.) No. 625/2016:

“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.”

8. The writ petition has been partially allowed by the learned Single Judge vide order dated 05.04.2021, passed in W.P.(C.) No. 625/2016.

9. Paragraphs 17 to 28 of the order passed by the learned Single Judge reads as under:

“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 subsection (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 1 was more than the amount of gratuity payable to the appellant. Clause (b) of subsection (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.” 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 1 was more than the amount of gratuity payable to the appellant. Clause (b) of subsection (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 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."

10. The Appellant being partially aggrieved by the order passed by the learned Single Judge has filed the present appeal only limited to the extent of remanding of the matter to the disciplinary authority and to pass a fresh order qua the charge sheet dated 11.11.2009.



11. The aforesaid undisputed facts of the case make it very clear that the Appellant was subjected to disciplinary proceedings and 3 charge sheets were issued to the Petitioner from time to time as under:

A. Charge sheet dated 29.11.2008

B. Charge sheet dated 11.11.2009

C. Charge sheet dated 31.05.2013

12. In respect of the first charge sheet dated 29.11.2008, an order of dismissal was passed by the disciplinary authority on 03.12.2009 and the appeal preferred by the Appellant under Regulation of the Union Bank of India (Discipline and Appeal) Regulations, 1976 was allowed.

13. The Appellate authority vide order dated 06.03.2012 moderated the punishment of dismissal to that of compulsory retirement and the aforesaid order of compulsory retirement dated 06.03.2012 has not been challenged by the Appellant.

14. The disciplinary authority in respect of the second charge sheet dated 11.11.2009 after punishment of dismissal was inflicted upon the Appellant on 03.12.2009 kept the proceedings in abeyance and the proceedings were re-opened only after the penalty of dismissal was converted into compulsory retirement. The third charged sheet dated 31.05.2013 was issued to the Appellant after his retirement and the Appellant took a plea before the learned Single Judge that no such charge sheet can be issued in respect of any event which took place more than four years before his retirement. The



statement of allegations in respect of the third charge sheet dated 31.05.2013 is reproduced as under:

“ STATEMENT OF ALLEGATONS

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.”

15. The statement of misconduct makes it very clear that the allegations were leveled against the Appellant in respect of certain credit facility sanctioned by the Appellant in the year 2007 and the accounts became NPA in the year 2008. Meaning thereby, the event on the basis of which the



charge sheet was issued took place 4 years before the date of issuance of charge sheet.

16. The learned Single Judge has quashed the charge sheet keeping in view the judgment delivered in the case of ***Punjab and Sindh Bank v. Nand Lal Phatnani***, LPA 674-677/2015.

17. The Hon'ble Supreme Court in the aforesaid case has held 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.

18. The learned Single Judge has also placed reliance upon a judgment delivered in W.P.(C) 2846/2017 titled as ***Baljit Singh Handa v. Punjab and Sindh Bank***, decided on 01.02.2021. Paragraphs 67 to 69 of the aforesaid judgment read 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 “acts” 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.”

19. In the light of the aforesaid judgment, the learned Single Judge was justified in quashing the charge sheet dated 31.05.2013 as it was in respect of events which took place more than 4 years in case of a retired employee before such issuance.

20. The bank has not preferred any appeal in the matter so far as the learned Single Judge has quashed the charge sheet dated 31.05.2013.

21. So far as the charge sheet dated 11.11.2009 is concerned, the disciplinary authority has passed a common order in respect of two charge sheets dated 11.11.2009 and 31.05.2013 imposing penalty of withholding of pension permanently. The order dated 06.01.2015 passed by the disciplinary authority is reproduced as under:

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<i>From:</i> <i>Department of Personnel</i> <i>Industrial Relations Division</i> <i>Central Office</i>	<i>To:</i> <i>Shri V.K. Malhotra</i> <i>Deputy General Manager</i> <i>(since compulsory retired)</i> <i>Central Office</i> <i>(P.F. No.59667)</i>
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CO:IRD:174:2015

6th January, 2015

This has 'reference to the departmental inquiry conducted by Shri U. B. Ratrikar, External Inquiring Authority into the charges/allegations levelled against Shri V.K. Malhotra, Dy. General Manager (since compulsorily retired), Central Office in terms of Articles of Charge no. CO:IRD:OS:VIG:366/2009 dated 11.11.2009 and no. CO:IRD:OS:VIG:258/2013 dated 31.05.2013 alongwith Statements of Allegations annexed thereto. The findings dated 05.02.2014 of the Inquiring Authority were sent to Shri Malhotra vide memorandum dated 14.02.2014 but Shri Malhotra did not make any submissions thereon.

I have since gone through all the papers of the cases including Articles of Charge, Statements of Allegations, the explanations submitted by Shri Malhotra (CSO), inquiry proceedings, oral as well as documentary. evidence produced at the inquiry, written briefs submitted by the PO as well as the CSO, findings of the Inquiring Authority, etc.

Based on the oral as well as documentary evidence produced at the inquiry, it has been proved that during his tenure as Regional Head; Jalandhar CSO committed various lapses in the account of M/s Satyam Cottex with Phagwara Branch. He also misused/abuse his position as Regional Head, Jabalpur and carried out several unusual/abnormal transactions in various SB accounts in his name and in the name of his family members without complying with the KYC and banking norms.

It has been sufficiently proved during the inquiry that CSO while working as Regional Head, Jalandhar approved takeover proposal in the account of M/s. Satyam Cottex with Phagwara Branch to whom CC 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 were sanctioned, despite following adverse features:

Credit rating was assessed at CR-5 instead of CR-4 required as per Loan Policy, leading to deviation of norms.



The account of the party with Bank of Baroda remained in excess over limit for 227 days during the period 27.08.2006 to 30.06.2007 and the Term Loan was overdue though adjusted subsequently.

While carrying out rating exercise of the firm, the loans availed by the proprietress alongwith her husband as also its sister concerns were not taken into account. Opinion from other Bank/FI viz. Canara Bank and Ashok Leyland Ltd. was not obtained.

The unit had only applied for SSI status and a provisional certificate had been given. The power connection was in the name of associate concern.

Proper due diligence was not done by branch regarding shifting of account from Bank of Baroda where credit facilities were sanctioned at cheaper rate of 13% as compared to our Bank's rate of 14% and sanctioning authority had not raised the issue before sanctioning the limit.

Approved plan of the unit was not available and NWC of the firm was inadequate even for existing limit with Bank of Baroda.

It has come on record of the inquiry that immediately after sanction of the limit, request for substitution of one of the properties was placed before CSO stating it was already mortgaged to Bank of Baroda against loan availed by Shri Manoj and Smt. Renu Sharma. Though, said fact was not reported by the branch in its proposal for sanction of limit, the CSO did not ascertain the reasons from the branch for such non-reporting, No effective steps were taken by the CSO to curb the practice of branch in allowing huge overdrafts, purchasing local and outstation cheques except sending letters to branch. Turnover in the account for the period 07.09.2007 to 19.03.2008 was Rs. 456.98 lacs. Average utilisation of limit was Rs. 162.00 lacs and maximum availment was Rs. 181.85 lacs. Total 33 cheques amounting to Rs.154.00 lacs were purchased by branch out of which 6 cheques totalling to Rs.27.00 lacs were returned unpaid. CSO also sanctioned enhancement of CC limit from Rs. 100.00 lacs to Rs.200.00 lacs on 19.03.2008 i.e. within a period of almost six months of first sanction despite persisting irregularities in the account as brought out in the process note as well as insufficient collateral to cover the exposure.



Due to lack of proper monitoring and control over the operations, the account became NPA immediately after a year and substantial amount of Bank is at stake.

It has also been established in the inquiry that during the tenure of CSO as Regional Head, Jabalpur, a number of huge cash deposit transactions were observed in various SB, DRC and Secured loan accounts of CSO and his family members/relatives. All those transactions were beyond known source of income of CSO. A number of transactions involving transfer of funds from and to the accounts of various customers/borrowers e.g. Rs. 30.00 lacs with Shri Anil Grover enjoying Cash Credit facility, Rs.20.00 lacs with M/s Solitaire Colonizers & Builders having account with G.T. Road Branch, Ludhiana, Rs.30.00 lacs with Shri Kamaljeet Singh s/o Trilok Singh Bagga, having SB account with Jabalpur City Branch Rs.9.50 lacs with M/s J. K.P. Collection Agency having account with Jabalpur City Branch, etc. were observed in his account.

It is proved in the inquiry that during his tenure at Jabalpur Region various deposits receipts of huge amount were prepared in the names of his relatives by way of deposit of cash without complying with KYC norms. In number of cases AOF were incomplete. Maturity proceeds of these deposit receipts were credited in the secured loan a/cs of the CSO though deposit receipts are not transferable and there were no discharge instructions in favour of the CSO. CSO misused his position as Regional Head by directing respective BMs to make payment / renewal of these deposit receipts without obtaining discharge from the account holders. In many cases proceeds of deposit receipts in the names of third parties were credited to secured loan accounts of CSO at his behest, violating all the banking rules and procedures. There were number of transactions carried out in the accounts related to him, his family members and relatives without proper mandate.

Various deficiencies were observed in his Assets & Liabilities Statements vis-à-vis the fund flow reflected in his various accounts and transfer of funds, etc. which were not commensurate with the known source of income of the CSO. Apart from non/wrong disclosure of various huge deposit receipts, the above transactions of Rs.20.00 lacs and Rs.30.00 lacs with the customers M/s Solitaire Colonizers



and Builders and M/s Kamaljeet Singh s/o Trilok Singh were not reflected in the statement as of 31.03.2007.

Based on the allegations proved against Shri Malhotra, the Inquiring Authority has held the following charges proved against him:

Failure to take all possible steps to ensure and protect the interest of the Bank.

Failure to discharge his duties with utmost devotion and diligence.

Acting otherwise than in his best judgement in the performance of his official duties,

It is evident that the CSO committed serious lapses by approving takeover proposal in the account of M/s Satyam Cottex inspite of deviations/shortcomings and enhancing the limits in a short time despite negative features. He also misused/abused his position by carrying out various transactions in his name as well as in the name of his family members/relatives; some of which in cash, in utter violation of bank's/RBI norms beyond his known source of income. He also committed an act of impropriety by entering into transactions of huge amount with customers/ borrowers in violation of Service Rules and not properly disclosing the same in his Statement of Assets and Liabilities. The reasons cited by the CSO that the transactions with customers were personal in nature, were carried out for a few days and should not considered as commercial transactions are not convincing. There is something more than what it meets the eye and points needle of suspicion to his intentions and integrity.

It is observed from the past service record of the CSO that major penalty of dismissal from the services of the Bank was imposed on the CSO vide Order No. CO:IRD:6325/09 dated 03.12.2009 for certain serious irregularities observed on his part in the account of M/s. Khatri Minerals and Mining Co. during his tenure as Regional Head, Jabalpur which was reduced to that of 'Compulsory Retirement from the services of the Bank' by the Appellate Authority vide Order No.CO:IRD:1370/2012 dated 06.03.2012.

Considering the gravity of allegations/charges proved against Shri Malhotra, in the present inquiry, I am of the opinion that the ends of



justice will be met by withholding the monthly pension payable to him permanently as provided in Regulation 43 of Union Bank of India (Employees') Pension Regulations, 1995.

Accordingly, in exercise of the powers vested under Union Bank of India Officer Employees' (Pension) Regulations, 1995, I hereby pass the following order:

ORDER

"Monthly pension payable to Shri V.K. Malhotra be and is hereby withheld permanently as specified in Regulation 43 of Union Bank of India Officer (Employees") Pension Regulations, 1995. However, the minimum pension per mensem payable under the said Regulations shall be paid to him."

22. In the considered opinion of this Court, once a common order was passed in respect of the two charge sheets dated 11.11.2009 and 31.05.2013 imposing penalty of withholding of pension permanently and as one of the charge sheets has been quashed by the learned Single Judge, the learned Single Judge was justified in remanding the matter back to the disciplinary authority to pass a fresh order in respect of the charge sheet dated 11.11.2009.

23. Learned counsel for the Appellant has vehemently argued before this Court that Regulation 48 of Pension Regulations envisages recovery of pecuniary loss, however, the said regulation is not applicable to dismissed/compulsorily retired employees who have been compulsorily retired by way of punishment keeping in view the definition of retirement as contained in Regulation 2(y).



24. Regulation 2(y) and Regulation 48 of the Regulations are reproduced as under:

“2.(y.) “retirement” means cessation from Bank’s service –

a) on attaining the age of superannuation specified in Service Regulations or Settlements;

b) on voluntary retirement in accordance with provisions contained in Regulation 29 of these Regulations;

c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

x x x x x x x x x

48. Recovery of pecuniary loss caused to Bank-

(as per Pension (Amendment) Regulations, 2017)

(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 his service:

Provided that the Board shall be consulted before any final orders are passed: Provided further that where a part of pension is withheld or withdrawn the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations:

Provided also that the 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.

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institutions:

Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3)Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee.”

25. In the considered opinion of this Court, the learned Single Judge has rightly remanded back the matter to the disciplinary authority and all grounds can certainly be raised by the Appellant before the disciplinary authority including the ground regarding applicability of Regulation 48 of the Regulations.

26. Learned counsel for the Appellant has argued before this Court that the disciplinary authority does not have the power to initiate enquiry in respect of the charge sheet dated 11.11.2009 and heavy reliance has been placed upon the judgment delivered in the case of ***State of Jharkhand & Ors. V. Jitendra Kumar Srivastava & Ors.***, Civil Appeal 6770/2013.

27. In the considered opinion of this Court, as the Appellant was a retired employee and was inflicted with a punishment of compulsory retirement, does not get exonerated on account of compulsory retirement and the



Regulations in vogue provides for continuance of the departmental enquiry even after retirement.

28. As a common order was passed in respect of the 2 charge sheets dated 11.11.2009 and 31.05.2013, the learned Single Judge was justified in remanding the matter back to the disciplinary authority to pass a fresh order in accordance with law.

29. It has also been vehemently argued before this Court that no show cause notice was issued before passing an order dated 06.01.2015 withholding the pension permanently and in the light of the judgment delivered in *S.P. Malhotra v. P.N.B. and Ors*, Civil Appeal 5128/2013, *Hira Lal v. State of Bihar & Ors.*, Civil Appeal 1677-78/2020, *State of A.P. v. N. Radhakishan*, Civil Appeal No. 3503/1997, no such punishment of withholding of pension could have been passed without issuing a show cause notice.

30. In the considered opinion of this Court, once the matter has been remanded back to the disciplinary authority in respect of charge sheet dated 11.11.2009 the disciplinary authority will certainly follow the prescribed procedure as provided under the law and, therefore, this ground also does not help the Appellant in any manner.

31. Learned counsel has also vehemently argued before this Court that once the order dated 06.01.2015 has been quashed all the benefits, including pension should be released to the Appellant.



32. In the considered opinion of this Court Regulation 48 of the Union Bank Of India (Employees') Pension Regulations, 1995 provide for continuance of the departmental proceedings if instituted while the employee was in service and after the retirement of the employee the proceedings shall be treated as proceedings under the Pension Regulations and, therefore, the proceedings are to be brought to a logical conclusion and the other issues can certainly be looked into while passing a final order by the disciplinary authority as directed by this Court.

33. The order passed by the learned Single Judge does not suffer from any legal infirmity and the undisputed facts of the case reveal that out of the two charge sheets dated 11.11.2009 and 31.05.2013, the charge sheet dated 31.05.2013 imposing penalty of withholding of pension permanently by order dated 06.01.2015 has been set aside and the learned Single Judge was certainly justified in quashing the order dated 06.01.2015 and by directing remand of the matter to the disciplinary authority. In the considered opinion of this Court no case for interference is made out in the peculiar facts and circumstances of the case as the disciplinary authority has to pass a fresh order in respect of the charge sheet dated 11.11.2009.

34. The learned Single Judge has also directed payment of gratuity with interest @ 9% per annum, arrears of pension with the interest of 9% per annum and the grant of other retiral dues as claimed by the Appellant can certainly be looked into after a final order is passed by the disciplinary authority in respect of the charge sheet dated 11.11.2009.



35. This Court does not find any reason to interfere with the order passed by the learned Single Judge in the peculiar facts and circumstances of the case and the LPA is accordingly dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 12, 2022

N.Khanna

