

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

**WPA 24486 of 2014
Sukumar Roy
Versus
Union of India & Ors.**

For the petitioner	:	Mr. Gautam Kumar Das Mr. Dipanjan Datta Mr. Indranuj Dutta Mr. Atanu Basu
For the respondent/bank	:	Mr. Bishwambhar Jha
Heard on	:	16.11.2023
Judgment on	:	16.11.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the communication dated 17th May, 2014 issued by the Deputy Regional Manager, Regional Office, Durgapur, Central Bank of India, convening a purported decision of the Appellate Authority that the appeal filed by the petitioner challenging the disciplinary proceeding and the imposition of punishment vide order dated 28th June, 2011 stands time barred and the same cannot be entertained.
2. The petitioner was employed with the Central Bank of India, Assansol Branch, Durgapur Region. He was initially appointed as a clerk on 8th June, 1973 and subsequently, he was promoted and posted as an officer in Scale-I at Patna Zonal Office on 2nd November, 1981. Subsequently,

thereafter from time to time he was transferred to different places and lately on 18th September, 2000 he was promoted as Scale-II officer and was posted initially at Shaymbazar Branch and thereafter at different branches of Central Bank of India.

3. In course of employment, the petitioner was served with a memorandum of show-cause dated 2nd April, 2009 alleging violation of Bank's guidelines in abetting withdrawal of fund in excess of sanctioned limits to the borrowers of credit facilities in respect of two accounts, namely, M/s Rajco Steel Enterprise and M/s Kali International Pvt. Ltd., by way of accommodation against uncleared effect of high value cheques, lodged in normal clearing which subsequently returned unpaid. Although, the petitioner had duly responded to the said show cause, yet the management having found his explanation to be unsatisfactory, decided to proceed with the disciplinary proceeding against the petitioner. Such fact was communicated to the petitioner vide a communication dated 3rd February, 2010 issued by the Assistant General Manager of the respondent/bank. Subsequently, the petitioner was served with a memorandum of charges dated 17th March, 2010, which contained as many as 8 charges of misconduct allegedly committed by the writ petitioner between 4th July, 2007 to 18th March, 2009.
4. The petitioner had since, filed his written statement of defence to the aforesaid memorandum of charges. According to the petitioner, he had not resorted to any manipulation and such fact would corroborate from the accounts as reflected and exhibited in various reports generated by the system. After conclusion of the enquiry, the enquiry report dated 18th March, 2011 was served on the petitioner. As per the aforesaid report out

of 8 charges, only charge no. 5 had not been proved, whereas the rest of the charges had been proved. The petitioner had duly made a representation to the aforesaid report against the purported findings, by denying all allegations and findings arrived at by the enquiry officer.

5. The disciplinary authority of the petitioner, however, taking into consideration the submission made by the petitioner and the enquiry report, by a final order dated 28th June, 2011, while agreeing with the findings of the enquiring authority had awarded the following punishment on the petitioner:

“Reduction to lower post i.e., from MMGS-II to Clerk under Regulation 4(g) of Central Bank of India Officer Employees’ (Discipline and Appeal) Regulations, 1976”

6. According to the petitioner consequent upon passing of the aforesaid order, by a communication in writing dated 26th July 2011 the petitioner’s pay was refixed. Mr. Dutta, learned advocate appearing for the petitioner submits that the petitioner is governed by the Central Bank of India Officer Employees (Conduct) Regulations, 1976 (hereinafter referred to as the said Regulation). The aforesaid Regulation recognizes the right of the petitioner to prefer a departmental appeal. Accordingly, in terms of the Regulation 17, the petitioner had preferred an appeal on 1st March, 2013. Admittedly, the said appeal was filed beyond the period of limitation prescribed for filing of appeal.
7. Mr. Dutta submits that during pendency of the aforesaid appeal the petitioner had retired from service on 31st March, 2013. Consequent upon his retirement, the authorities being otherwise obliged, had disbursed his retiral benefits. It was only on 17th May, 2014 by a communication issued by the Deputy Regional Manager that the petitioner was informed that the

appeal filed by him stood dismissed as being time barred. According to Mr. Dutta the petitioner while preferring the appeal, had appropriately explained the circumstances as to why the petitioner could not prefer the appeal within the time specified.

8. It is submitted that Regulation 21 of the said Regulation authorizes the competent authority in appropriate cases to condone the delay. Unfortunately, while communicating the factum of dismissal of the appeal to the petitioner, after more than one and a half year from the date of filing of the appeal, no reasons had been given by the authority as to why, in spite of the explanation provided by the petitioner for filing the appeal belatedly, the explanation was found not to be sufficient. According to the petitioner, the aforesaid communication is a cryptic communication and the original order had never been served on the petitioner. The aforesaid communication/order cannot be sustained and should be set aside and the aforesaid case should be remanded back to the Appellate Authority for it to take a fresh decision in this matter, on merit.
9. Mr. Jha, learned advocate appearing for the respondents/bank, on the other hand, by filing a supplementary affidavit in Court today, which is taken on record, submits that the present writ application is not maintainable. According to him, the petitioner having accepted his retiral dues, cannot be permitted to question the findings rendered by the appellate authority. Admittedly, a disciplinary proceeding had been initiated against the petitioner, which ultimately resulted in the final order dated 28th June, 2011. The said final order had been given effect to. The petitioner had accepted the final order. The petitioner had, however, filed the appeal belatedly in the year 2013. According to Mr. Jha, the

explanation given by the petitioner is insufficient and it is for such reason, the appellate authority had dismissed the appeal filed by the petitioner.

10. In support of his contention, Mr. Jha has placed reliance on an unreported judgment delivered by a Coordinate Bench of this Court in ***W.P. No. 30108 (W) of 2017*** in the case of ***Sri Pratap Ray -vs- Kolkata Metropolitan Development Authority & Ors.*** According to him, the present writ application deserves to be dismissed with costs.
11. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, I find that the disciplinary proceeding had been initiated against the petitioner while he was in service. The same ultimately culminated in the final order dated 28th June, 2011, by awarding the petitioner with the punishment as noted hereinabove.
12. The aforesaid punishment, read with Regulation 4 of the said Regulation would in no uncertain terms demonstrate that the said punishment constitute a major penalty within the meaning of the said Regulation. It is further noticed that the said Regulation confers a right on the officer employees to prefer an appeal, from any order of punishment. Regulation 17(2), however, provides that the appeal shall be preferred within 45 days from the date of receipt of the order. At the same time, as rightly pointed out by Mr. Dutta, Regulation 21 of the said Regulation also authorizes the competent authority for good and sufficient reasons or when sufficient cause is shown, to extend the time specified in the aforesaid regulation for anything required to be done under these regulations or to condone the delay.

13. Admittedly, in this case, it is noticed that when the appeal was filed, the petitioner was in service. Although, it has been contended by Mr. Jha that the petitioner having accepted his retiral benefit, is estopped from challenging the decision taken by the appellate authority, I am unable to accept the same.

14. When the retiral benefits were disbursed in favour of the petitioner, the petitioner had already preferred the appeal. Such appeal was, however, kept pending and was not decided by the appellate authority for more than a year, at least no intimation of dismissal of the appeal was given to the petitioner at the time of his superannuation or prior to disbursement of his retiral benefits. It is only on 17th May 2014, i.e., nearly after 1 year and 2 months that by a communication the Deputy Regional Manager had communicated the petitioner, with the following:

“With reference to above we may inform you that Central Office observation in the matter of Appeal dated 01.03.2013 preferred by Sri Roy is as under.

- 1) Final order in the Disciplinary Action case against Shri Roy was passed by the Disciplinary Authority on 28.06.2011*
- 2) Sri Roy has submitted his Appeal in the matter only on 01.03.2013 i.e. very long after expiry of the stipulated period of 45 days.*
- 3) Thus the Appeal stands time barred and the same can not be entertained.”*

15. The original order of the appellate authority was never been served on the petitioner. Mr. Jha also could not produce any other documents. He submits that the aforesaid communication happens to be the only available document in connection with the dismissal of the appeal.

16. Although, the appellate authority had been conferred with the power to condone the delay and despite the petitioner having explained the reasons for delay, no reasons had been disclosed in the aforesaid communication

as to why the appeal was kept pending for over a year. The discretion in refusing to condone the delay does not appear to have been exercised judiciously. There is no finding of the appellate authority as regards insufficiency of the explanation given by the petitioner, in fact there appears to be complete non-consideration of the explanation given by the petitioner and complete failure to exercise the jurisdiction to condone the delay, since, the communication proceeds on the premise that a time barred appeal cannot be entertained.

17. It is well settled that a discretion also requires to be exercised judiciously.

In absence of judicious exercise of discretion by the appellate authority, it is very difficult for the aforesaid order to be sustained. The aforesaid order also suffers from failure to exercise jurisdiction provided under Regulation 21 of the said Regulation. Although, Mr. Jha by relying on the decision in the case of **Sri Pratap Ray (Surpa)** has tried to impress upon this Court that the writ application is not maintainable, I, however, notice that the facts of the said case are different from the facts of this case. In the aforesaid case, after the final order was passed by the disciplinary authority, the employee concerned had accepted his retiral dues and only, thereafter without filing any statutory appeal had invoked the extraordinary jurisdiction of this Court.

18. It is in the factual backdrop as aforesaid that the Coordinate Bench while applying the principles of estoppels, held that the employee concerned was estopped from challenging the said order. Such is not the case here. Admittedly, the petitioner had preferred a departmental appeal which was admittedly, pending when the petitioner retired from service. The right to

receive retiral dues consequent upon attaining the age of superannuation is a legal right and the respondents were otherwise obliged to disburse the retiral dues, subject to pendency of the appeal, which had been done in this case. The aforesaid judgment does not assist the respondent/bank.

19. Having regard to the aforesaid, the objection raised by Mr. Jha fails as the same is not sustainable in law. For reasons discussed hereinabove, the communication dated 17th May, 2014 being the only communication on record with regard to dismissal of the petitioner's appeal also cannot be sustained and the same is set aside and quashed. Further taking note of the long pendency of the writ application, I am of the view that no fruitful purpose will be served at this stage by directing the appellate authority to re-hear the question of condoning the delay in preferring the appeal.

20. Having regard to the aforesaid and taking note of the explanation provided by the petitioner in filing the appeal beyond the time prescribed, I find that delay in filing the appeal has been sufficiently explained. As such, I direct the appellate authority to hear out the petitioner's appeal on merit and dispose of the same within a period of 8 weeks from the date of communication of this order.

21. It is made clear that this Court has not gone into the merits of the appeal and the appellate authority shall decide the appeal on its own merit without being influenced by any of the observation made hereinabove.

21. Accordingly, the writ application being WPA 24486 of 2014 is accordingly ***disposed of.***

22. There shall be no order as to costs.

23. All parties shall act on the basis of the server copies of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)