

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

BEFORE:

The Hon'ble Justice RAJA BASU CHOWDHURY

WPO/548/2012

**SWAPAN KUMAR BASU
VERSUS
PUNJAB NATIONAL BANK & ANR.**

For the Petitioners : Mr. Victor Chatterjee, Advocate
Mr. Barnamoy Basak, Adv.

For the Respondents : Mr. R. N. Majumder, Advocate
Mr. S. M. Obaidullah, Advocate

Heard on : 18th January, 2023

Judgment on : 5th April, 2023.

RAJA BASU CHOWDHURY, J.:

1. The present writ application has been filed, *inter alia*, challenging the entire disciplinary proceedings and for quashing the charge-sheet, order passed by the Disciplinary Authority and the order of the Appellate Authority. It is the petitioner's case that the petitioner was appointed as clerk with United Bank of India (in short "UBI"). In course of his employment, by an order dated 26th August, 1987, he was placed under suspension in contemplation of departmental

proceedings. On 27th August, 1987, Senior Chief Manager of UBI lodged a FIR and on the basis thereof, a criminal case being G.R. Case No. 2951 of 1989, T.R. No. 102 of 2002 was initiated against the petitioner which ultimately culminated in an order of acquittal passed by the Learned Metropolitan Magistrate, 15th Court, Calcutta.

2. It is also the petitioner's case that in the interregnum, UBI stopped paying the petitioner subsistence allowance which he was entitled. This prompted the petitioner to approach this Hon'ble Court. By order dated 17th April, 2003, this Hon'ble Court directed UBI to consider the fixation of subsistence allowance within a specified time frame. Despite passing of such order, since the General Manager (Personnel) of the UBI by his letter dated 19th June, 2003, refused to fix the subsistence allowance, the petitioner filed another application before this Hon'ble Court which was registered as WP No.1579 of 2003. By judgment and order dated 12th January, 2004, this Hon'ble Court directed that the petitioner was entitled to benefits of the Bipartite Settlement. The aforesaid order passed by this Hon'ble Court was carried in appeal. It is in connection with the aforesaid appeal that the Division Bench of this Hon'ble Court fixed the subsistence allowance payable to the petitioner at Rs.5000/-. Since UBI did not proceed with the aforesaid appeal, the same was, accordingly dismissed by an order dated 26th July, 2005.

3. It is during the pendency of the aforesaid appeal that the UBI issued a charge-sheet against the petitioner dated 8th April, 2005. The petitioner had duly responded to the said charge-sheet. It is the further case of the petitioner that notwithstanding the petitioner's objection, the Disciplinary Authority had continued with the disciplinary proceedings during the pendency of the criminal trial and had also passed a final order. In the interregnum, challenging the continuance of disciplinary proceedings, a writ application being WP No. 1737 of 2005 was filed. The aforesaid writ application was finally heard and disposed of by order dated 20th March, 2009, in terms whereof both the disciplinary proceedings as also the final order passed in connection with the same were quashed. Later by an order dated 8th July, 2009, the Division Bench of this Hon'ble Court, in an appeal arising out of the order dated 20th March 2009 passed by the learned Single Judge, was pleased to permit the Disciplinary Authority to proceed with the disciplinary proceedings afresh, as in the interregnum the criminal proceedings had come to an end by an order dated 30th December, 2005, passed by the learned Chief Metropolitan Magistrate, 15th Court, Calcutta.
4. Pursuant to the aforesaid, fresh disciplinary proceedings were continued and the same ultimately culminated in an order of punishment dated 8th November 2010, whereby the petitioner was awarded a punishment of compulsory retirement with

superannuation benefits i.e. Pension and/or Provident fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment. The Disciplinary Authority by the aforesaid order was, *inter alia*, pleased to further observe as follows:

*“In view of the facts and circumstances of the case and the gravity of the misconduct committed by you, I find that the proposed punishment has been just and proper. Therefore, I impose upon you the punishment of ‘**Compulsory Retirement with superannuation benefits i.e. Pension and/or Provident fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment**’ under Clause 6(c) of Bipartite Settlement dated 10th April, 2002 with immediate effect.*

It may further be noted that the period of your suspension shall not be treated as on duty and accordingly, you will not be entitled to pay and/or allowances including increments falling due, if any, during the period of your suspension, save and except what have been paid to you by way of subsistence allowance.”

5. Although the petitioner had preferred an appeal, the appellate authority by order dated 29th July, 2011 was, *inter alia*, pleased to uphold the punishment of ‘compulsory retirement with superannuation benefits i.e. Pension and/or Provident fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from

future employment'. Challenging the disciplinary proceedings, the order of compulsory retirement and the order of the appellate authority, the present writ application has been filed.

6. At the time of admission of the instant writ application, Mr. Majumder, learned Advocate representing the respondents, had objected to the maintainability of the writ application, *inter alia*, by claiming that since the petitioner was an award staff, therefore, he ought to have pursued his remedy in terms of Industrial Disputes Act, 1947. I, however, find that this Hon'ble Court, by an order dated 9th July, 2013, while negating the aforesaid contention of alternative remedy raised by Mr. Majumder, had entertained the writ application and had directed exchange of affidavits.
7. Mr. Chatterjee, learned Advocate representing the writ petitioner, after arguing the matter for sometime had submitted, on instructions, that he no longer wishes to challenge the disciplinary proceedings but he is interested to get the superannuation benefits in terms of Clause 6(c) of the Bipartite Settlement entered into between the consortium of banks, which is also binding on the respondent no.1 as also its successor-in-interest, being the Punjab National Bank. He says that the Disciplinary Authority had awarded punishment in terms of Clause 6(c) of the Bipartite Settlement (hereinafter referred to as the 'said Settlement'). He says that in terms of Clause 6(c) of the said Settlement, although a punishment of

compulsory retirement has been awarded yet at the same time the concerned employee is awarded superannuation benefits which includes pension, provident fund and gratuity, as would be due otherwise under the Rules and Regulations prevailing at the relevant point of time and without disqualification from future employment. By referring to Chapter 23 of the said Settlement, he says that it was open to the management of the respondent no.1 to award punishment as has been enumerated under the various Sub-Clauses of Clause 6 of the said Settlement. Having chosen to award punishment in terms of Clause 6(c) of the said Settlement, the Disciplinary Authority could not have, in derogation of the provisions contained in the said Settlement, directed that the period of suspension shall not be treated as on duty and the petitioner shall not be entitled to pay allowance including increments fallen due, to him during the period of suspension, save and except, what has been paid to him by way of subsistence allowance. By further referring to Clauses 3 and 6 and various Clauses under Chapter 23 of the said Settlement, it is submitted that his case could have been covered under Sub-Clause (c) of Clause 3 of the aforesaid chapter. The disciplinary authority, however, thought it fit to impose punishment on him in terms of Clause 6(c) of Chapter 23. Having thus, imposed punishment in terms of Clause 6(c) of Chapter 23, of the settlement the respondents ought not to have denied the benefits, which the

said Settlement had provided to the employees, as per the various terms which are recorded in the respective clauses of the said Settlement.

8. He submits that the respondents have till date not complied with the provisions of Section 6(c) of the said Settlement; the respondents ought to have favoured the petitioner with the superannuation benefits as are otherwise available to him. He submits, on instructions, that he is only interested in obtaining superannuation benefits. While referring to the report filed by the respondent no.1, he says that it would be apparent from the report that the respondent no.1 had only made payment of gratuity for the period up to 26th August, 1987, and not up to the date when the petitioner's relationship with the respondent no.1 came to an end, consequent upon issuance of the order of compulsory retirement. He says that on the respondent no.1's own showing, the respondents are bound to make payment of the gratuity which admittedly had fallen due, in terms of the order of punishment awarded to the petitioner. He submits that unless respondent no.1 is directed to comply with their own order, the petitioner, who is presently 70 years old, will suffer irreparable loss and injury.
9. *Per contra*, Mr. Majumder, learned Advocate representing the respondents, submits that a criminal proceeding was initiated against the writ petitioner. The petitioner was served with a charge-

sheet. Subsequently, disciplinary proceedings were initiated. When the respondent attempted to proceed with the enquiry proceedings, the petitioner stood in the way of such enquiry. It was only upon acquittal of the petitioner that the enquiry proceedings could once again be started, *de novo*. Mr. Majumder by referring to the charge-sheet at page 45 of the writ application submits that serious charges were levelled against the petitioner. He submits that simply because petitioner had been acquitted in the criminal trial, the same does not mean that enquiry proceedings cannot be proceeded against the petitioner. He says that the standard of proof, in criminal trial and in a disciplinary proceeding are different. In the instant case, the petitioner has been held guilty of the charges levelled against him. Ultimately, he was awarded with punishment of compulsory retirement in terms of Clause 6(c) of Chapter 23 of the said Settlement. He says that the appellate authority did not interfere with the order passed by the disciplinary authority and as such, the order passed by the disciplinary authority stands confirmed. He submits that pursuant to the direction passed by this Hon'ble Court, a report has been filed by the respondent no.1. According to Mr. Majumdar, nothing is due and payable to the petitioner. Not only the provident fund accumulations but the gratuity which was due and payable to the petitioner has been disbursed. For the purpose of computing both provident fund and gratuity, the authority had taken into

consideration, the date when the petitioner had entered into service and the date when the order of suspension had been issued. Since the petitioner had not been reinstated in service, the petitioner cannot be entitled to gratuity for the period he was under suspension and in this case the order passed by the disciplinary authority specifically provided that the petitioner was not entitled to pay for the period when he remained under suspension. In the light of the submissions made by the petitioner's advocate that he does not wish to challenge the enquiry proceedings any further, nothing survives in the writ application, the same should be dismissed.

10. I have heard the submissions made by learned advocates for the respective parties and have considered the materials on record. I find that by an order dated 26th August, 1987, the writ petitioner while in service was placed under suspension in contemplation of a departmental proceedings, on the following date a FIR was lodged on the basis whereof a criminal case was initiated against the petitioner. The same ultimately culminated in acquittal of the petitioner by a judgment and order dated 30th December, 2005, passed by the learned Metropolitan Magistrate, 15th Court, Calcutta. In the interregnum, however, the respondent no.1 had initiated the departmental proceedings in contravention of the 8th Bipartite Settlement. Challenging the initiation of departmental proceedings during the pendency of the criminal trial, the

petitioner moved this Hon'ble Court by filing a writ application being WPA No. 1737 of 2005. By order dated 12th September, 2005, this Hon'ble Court directed that the departmental proceedings may continue in accordance with law but the Final Order if passed adversely affecting the petitioner will not be given effect to without leave by this Court. The petitioner did not attend the department proceedings on 22/23rd September, 2005, and the department proceedings were held ex-parte. The enquiry officer submitted his report on 7th November, 2005, holding the petitioner guilty of the charges. By cover of letter dated 24th November, 2005, the petitioner was furnished with a copy of the report. By letter dated 9th December, 2005, the petitioner submitted his representation against the enquiry report. After the petitioner was acquitted of the criminal charges, by letter dated 22nd February, 2006, the Disciplinary Authority proposed the punishment of compulsory retirement with superannuation benefits to the petitioner. The petitioner made his representation against the proposed punishment by his letter dated 7th March, 2006, whereupon the Disciplinary Authority passed his Final Order of compulsory retirement on 13th March, 2006.

11. The said writ application being WPA No. 1737 of 2005 was finally heard and disposed of by this Hon'ble Court and by a judgment and order dated 20th March, 2009, the order of punishment was

quashed and set aside. The aforesaid order dated 20th March, 2009, was carried in appeal by the respondents. The Division Bench of this Hon'ble Court by an order dated 8th July, 2009, was, *inter alia*, pleased to set aside the judgment and order of the learned Single Judge to the extent the Court refused liberty to the respondents to proceed with departmental proceedings afresh. By the aforesaid order, the Division Bench of this Hon'ble Court granted liberty to the respondent bank to proceed afresh, on the basis of the charge-sheet already issued by them. Although a Special Leave Petition was filed challenging the said order, the same was dismissed by an order dated 1st October, 2009.

12. After conclusion of the enquiry, *de novo*, the enquiry officer submitted his report dated 15th July, 2010, concluding that the petitioner has been held guilty of committing misconduct, in terms of the charges levelled against him, vide charge-sheet dated 8th April, 2005. The aforesaid enquiry report was forwarded to the petitioner by cover of letter dated 16th July, 2010, for the petitioner to respond to the same. The petitioner by letter dated 27th July, 2010, made a representation against the enquiry officer's report. The disciplinary authority thereafter had issued a second show-cause notice dated 29th September, 2010, and while accepting the report of the enquiry officer, proposed to impose upon the petitioner a major punishment of 'compulsory retirement' under

Clause 6(c) of the Bipartite Settlement dated 10th April, 2002, for having committed gross misconduct. While proposing as such, the disciplinary authority also afforded the petitioner a personal hearing, in terms of Clause 12(a) of chapter 23 of the memorandum of settlement/bipartite settlement dated 10th April, 2002, on the nature of punishment proposed. Ultimately, by an order dated 8th November, 2010, the disciplinary authority was, *inter alia*, pleased to impose a punishment of **“compulsory retirement with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing and without disqualification from future employment”** under Clause 6(c) of the Bipartite Settlement dated 10th April, 2002, with immediate effect. Additionally the Disciplinary Authority also noted as follows:-

“It may further be noted that the period of your suspension shall not be treated as on duty and accordingly, you will not be entitled to any pay and/or allowances including increments falling due, if any, during the period of your suspension, save and except what have been paid to you by way of subsistence allowance.”

13. Although the petitioner had preferred an appeal from the said order, the appellate authority by order dated 29th July, 2011, which was forwarded to the petitioner, by cover of letter dated 10th

October, 2011, while disposing of the appeal was, *inter alia*, pleased to observe as follows :-

“Therefore, in consideration of the nature and gravity of the misconduct proved in the enquiry, against the Appellant, I do not find any cogent reason or scope for intervening in the quantum of punishment imposed upon him by the Disciplinary Authority. I therefore, upheld the punishment of “Compulsory Retirement with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing in the Bank and without disqualification from future employment.”

With the above decision, I now dispose off the appeal preferred by the appellant.”

14. In course of hearing of the present application the learned advocate for the petitioner has categorically submitted that he does not wish to challenge the enquiry proceedings, any further as the petitioner has reached the age of superannuation. He says that the petitioner is only interested in receiving his retiral benefits. It is, however, submitted that the order of punishment passed by the disciplinary authority is de hors the provisions of Clause 6(c) of the said Settlement dated 10th April, 2002. The Settlement between the parties is binding both on the petitioner as also the respondent-bank; no punishment could have been awarded to the petitioner which is contrary to the Settlement between the parties. The

disciplinary authority had also proposed to award punishment on the petitioner in terms of Clause 6(c) of the Settlement, having thus so proposed, the disciplinary authority ought not to have been deviated therefrom and ought not to have been enlarged the punishment, by directing that the period of suspension shall not be treated as on duty and that the petitioner shall not be entitled to any benefits during the said period save and except the subsistence allowances already paid.

15. Although Mr. Majumder learned advocate representing the respondents, has strenuously argued that the respondents had awarded the punishment strictly in terms of Clause 6(c) of Chapter 23 of the said Settlement and that nothing is due and payable to the petitioner, I am afraid and am unable to accept the same. I find that the disciplinary authority by communication in writing dated 29th September, 2010, had while considering the gravity of the misconduct and the enquiry report as also on the basis of independent application of mind, had proposed to impose upon petitioner a major penalty/punishment of compulsory retirement under Clause 6(c) of the said Settlement dated 10th April, 2002, for having committed gross misconduct which according to the disciplinary authority was to commensurate with the misconduct proved against the petitioner. The said letter did not in any way propose any punishment including, treating the period of

suspension of the petitioner as not on duty, thereby curtailing pay and allowances and increments to the petitioner.

16. Chapter 23 of the Bipartite Settlement deals with disciplinary action and procedures therefor. Clause 3 thereof provides for the steps to be taken by the management when in the opinion of the management an employee has committed an offence. While Clause 3(b) deals with cases where the delinquent is convicted, for which punishment in terms of Clause 6 is proposed, Clause 3(c) thereof, *inter alia*, deals with cases where the delinquent is acquitted and steps to be taken there on, without any further enquiry by the management. The same *inter alia*, provides as follows:

“If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clause 11 and 12 infra relating to discharges, However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months’ pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so directs.”

17. Clause 6 of the said Settlement deals with the various categories of punishments.
18. In the instant case, notwithstanding acquittal, a regular domestic enquiry had been held wherein the petitioner had been held guilty of gross misconduct and accordingly, the disciplinary authority had proposed to be inflict punishment in terms of Clause 6(c) of the said Settlement, which according to the disciplinary authority was to be just and proper and was to commensurate with misconduct proved against the petitioner. Incidentally, however, while proposing the punishment the disciplinary authority did not propose any other punishment. Since the respondents have not chosen to remove the petitioner from service with three months notice pay, despite having independently enquired into the misconduct allegedly committed by the petitioner, in my opinion the provisions of Clause 3(c) cannot be made applicable in this case.
19. Additionally in this case the petitioner had not been dismissed from service nor had he been removed or discharged. The petitioner had been compulsorily retired with superannuation benefits i.e. pension and/or provident fund and gratuity as would be otherwise due to him, under the Rules and Regulations prevailing at the time and without disqualification from future employment. In such view of the matter, the date of retirement of the petitioner, for official propose, would remain the date on which

the Final Order of punishment had been passed; that being the case, the petitioner cannot be denied the service benefits till the date of his retirement. Denial of service benefits to the petitioner would tantamount to breach of the terms of the said Settlement as well.

20. Independent of the aforesaid as noted above, I find that the disciplinary authority after applying his mind on the gravity of the charges had concluded that compulsory retirement with superannuation benefits would be just and proper punishment. As such having, thus, proposed to limit the punishment to compulsory retirement with superannuation benefits, could not have enlarged the punishment at the time of passing the Final Order.
21. I further find that the Appellate Authority by its order dated 29th July, 2011, has, *inter alia*, been pleased to uphold the punishment of 'compulsory retirement with superannuation benefits that is pension and/or provident fund, gratuity as would be due otherwise under the Rules or Regulations prevailing and without disqualification from future employment'. The Appellate Authority also did not uphold the other part of the direction issued by the disciplinary authority, insofar as the same denied the petitioner's entitlement to any pay and allowance including increments falling due, if any, during the period of his suspension, save and except

what had been paid to him by way of the subsistence allowance.

On the aforesaid terms the appeal had been disposed of. In the light of the discussions made hereinabove, the respondents cannot be permitted to deny the legitimate entitlement of the petitioner.

22. For reasons morefully discussed hereinabove, the respondents are directed to recompute the retiral benefits of the petitioner and to disburse the same in favour of the petitioner within the period of 8 (eight) weeks from date the date of communication of this order, by treating the petitioner to be on duty till the date of his compulsory retirement along with 7 per cent interest thereon for delayed payment of retiral dues.
23. With the aforesaid observations/directions the writ application is disposed of.
24. There shall, however, be no order as to costs.
25. Urgent photostat certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(RAJA BASU CHOWDHURY, J.)