**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**APPELLATE SIDE**

**Present:**
**The Hon'ble Justice Debangsu Basak**
**And**
**The Hon'ble Justice Md. Shabbar Rashidi**

**F.M.A. 1236 of 2021**
**With**
**CAN 1 of 2021**
**CAN 2 of 2024**

**Smt. Rashmoni Hela**
**VS.**
**State Bank of India & Ors.**

For the Appellant : Mr. Samrat Sen, Sr. Adv.,
Ms. Parna Roy Choudhury

For the Respondents : Mr. Subrata Sinha
Mr. S. Pal
Mr. S. Pal Chaudhari

Heard on : July 18, 2024

Judgment on : July 18, 2024

## DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated January 21, 2021 passed in W.P.A. 10441 of 2020.

2. By the impugned order, learned Single Judge allowed the reopening of the proceedings against the appellant from the stage of the enquiry.

3. Learned Senior Advocate appearing for the appellant submits that, the appellant was issued a charge sheet on April 7, 2020 alleging gross misconduct as contemplated in the bipartite settlement dated April 10, 2002. Appellant submitted a response to the charge sheet on May 12, 2020. Written submissions were exchanged in such proceedings. Enquiry Officer returned a finding of not guilty as against the appellant. Departmental authority, however, decided that a *de novo* enquiry should be initiated, by the order dated November 7, 2020.

4. Learned Senior Advocate appearing for the appellant submits that, this order of the disciplinary authority dated November 7, 2020 was assailed in the writ petition which gave rise to the impugned order. He submits that during the pendency of the appeal, there was a stay granted by the Coordinate Bench with regard to the impugned order. Thereafter the affidavits were directed to be exchanged. Paper Books are presently ready.

5. Learned Senior Advocate appearing for the appellant submits that, the appellant superannuated from service on May 31, 2024. Relying upon **(1999) 3 SCC 666** (**Bhaghirathi Jena vs. Board of Directors, O.S.F.C. & Ors.**) and **(2014) 7 SCC 260** (**Dev Prakash Tewari vs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow & Ors.**), he submits that, the

authorities should now be directed to disburse the retiral benefits as the disciplinary proceeding can no longer be continued with. He refers to the service rules governing the parties and submits that, the service rules are silent with regard to continuation of a departmental proceeding in respect of an employee of the grade as that of the appellant, after superannuation.

6. Learned advocate appearing for the bank submits that, the bank was prevented by an order passed by the Division Bench from continuing with the departmental proceeding. He submits that since the rules do not expressly prohibit continuation of the departmental proceeding after superannuation, bank should be permitted to continue with the departmental proceedings.

7. Appellant was a Group-C employee of the bank. Appellant was governed by the bipartite settlement dated April 10, 2002.

8. Appellant was issued a charge sheet dated April 7, 2020 alleging misconduct as contemplated under the bipartite settlement dated April 10, 2002. Appellant responded thereto in writing on May 12, 2020. The written notes were exchanged between the parties. In the disciplinary proceedings, Enquiry Officer found the charges as against the appellant to be not proved. Disciplinary authority, however, by a communication dated November 7, 2020 ordered *de novo* enquiry as against the appellant.

9. Aggrieved by the order dated November 7, 2020, appellant filed W.P.A. 10441 of 2020. Such writ petition was disposed of by the impugned order dated January 21, 2021 requiring the appellant to reopen the first enquiry proceeding.

10. Appellant preferred the present appeal. In the present appeal, from time to time orders were passed by the Coordinate Bench and order of stay of the impugned order was granted. Departmental proceeding was stayed pursuant to such order of the Division Bench. Such stay is still continuing.

11. Appellant superannuated from service on May 31, 2024.

12. The issue, therefore, before us is whether the bank can continue with the departmental proceeding from the stage as directed by the learned Single Judge or otherwise or not.

13. **Bhaghirathi Jena** (supra) noted absence of any provision of the service rules governing the employee for continuance of a disciplinary proceeding subsequent to the superannuation of such employee. In such context, it observed as follows:-

> "7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the

> Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

14. Similar view was expressed in **Dev Prakash Tewari** (supra) in paragraphs 8 and 9 which are as follows:

> "8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.
>
> 9. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and up to the date of reinstatement. Inasmuchas the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him."

15. Admittedly, service conditions governing the appellant do not permit continuation of disciplinary proceeding subsequent to her superannuation. At the very least, the service conditions are silent on such an issue.

16. Consequently, in our view, the parties before us are governed by the ratio laid down in **Bhaghirathi Jena** (supra) and **Dev Prakash Tewari** (supra) which are of the view in absence of an authority to continue with the

disciplinary proceeding, subsequent to superannuation, the same lapses and the delinquent is entitled to receive full retiral benefits.

17. In such circumstances, the impugned order is set aside.

18. Bank will disburse the retiral benefits of the appellant preferably within a period of four weeks from date.

19. **F.M.A. 1236 of 2021** along with the connected applications are disposed of accordingly without any order as to costs.

**(Debangsu Basak, J.)**

20. I agree

(**Md. Shabbar Rashidi, J.**)

S.D.