From the Desk of Editor

DISCIPLINE IN BANK

Discipline is the foundation upon which the success of any organization is built. Any organisation requires a framework of policies, rules, regulations and procedures to fulfill its roles. These are necessary to function in an orderly and smooth manner. Orderly conduct based on well-defined standards and clear guidelines is called discipline. In other words, the term "Discipline" refers to a code of conduct to be observed by an employee during employment.

The word '***discipline***' is probably derived from the word '***disciple',*** which means learner or follower. Often, the phrase ***"to discipline"*** carries a negative connotation. This is because enforcement of the order, i.e. ensuring that instructions are carried out, is often regulated through threats and punishment.

When a person spontaneously and willingly abides by the required norms, it is called positive or constructive discipline; whereas when he is compelled to behave in a particular way under threat or fear of punishment, it is termed as a negative or punitive discipline. Although positive discipline is desirable, there will be occasions when punitive action has to be resorted to.

The objectives for taking disciplinary action are:

a) Punishment to make the employee realise the seriousness of infringing the rules of conduct.

b) Deterrent effect on others for bringing improvement in the work culture.

c) To prevent the recurrence of such events within the organisation.

Disciplinary action is not welcomed by the employees but it is an inevitable function of the management. The humanitarian approach in disciplinary action is most important. To err is human. It is therefore to be seen whether an act of misconduct is committed out of ignorance of rules, negligence, or out of a deliberate plan. One needs to ask himself if the person is a habitual offender or if the offense is a one-time stray occurrence. Similarly, he needs to ascertain the circumstances that led to the event and find out if the employee is repentant or not. He also needs to see if a lesser punishment would help the employee reform himself. Consideration of these factors may be helpful to guide the authority concerned in handling a particular case. Sometimes the dependent family situation may also play a role. However, excessive preoccupation with such humanitarian considerations may sometimes be dysfunctional. In any case, an organisation cannot take on the role of reformatories to the detriment of its own goals and function.

Douglas McGregor explains the characteristics of disciplinary action by the analogy of a hot stove, popularly known as the Hot Stove theory. Hot stove rules are the principles to help perform disciplinary action without making an employee feel resentful or bitter:

1. Announcement: A hot stove, when being used, emits heat, light, and sound, and thereby makes its presence felt. The organisation, similarly, publishes the conduct rules, and code of discipline and provides them to all cadres of employees. The employees are, thus, put on notice regarding the framework of discipline; they are required to adhere to.

2. Advance Warning: Any person approaching the hot stove feels the growing intensity of heat having a fair warning. Likewise, an employee trying to violate the rules will be made aware of the consequences of such an act. The list of punishments, that an organization may inflict upon an employee for violation of service

rules, serves the purpose of a warning. Normally, the appropriate authority will observe any tendency of an employee to break the rules and caution him in time to preempt resorting to disciplinary action at a later stage.

3. Immediate Action: The hot stove burns the persons coming into contact instantaneously without any delay. In the same analogy, when a lapse occurs, disciplinary action should be taken immediately, and the persons responsible proceeded without any delay. The well-known maxim "justice delayed is justice denied" has relevance here, and as such, any undue prolongation of the process will only compound the gravity of the lapse.

4. Impartial Approach: The hot stove does not discriminate between persons coming into contact. A person's gender, religion, caste, age, region, language, or any other distinctive feature has absolutely no role to play in the punishment inflicted on him. The disciplinary action, in the same way, should be taken with an absolute sense of impartiality, without differentiation on account of extraneous factors. There may however be compelling reasons for showing certain distinctness. The concerned authority should take care to ensure that such reasons are stated explicitly so that the validity of such reasons is well appreciated by one and all, especially the affected employee. Needless to mention that consistency in awarding punishments, and transparency, in case of any deviation, should be the hallmark of the disciplinary proceedings.

5. Impersonal Attitude: Just as the hot stove does not derive any pleasure or satisfaction by burning the person coming into contact, the Disciplinary Authority should have no emotional involvement in the process. Enforcement of discipline is an operational necessity and the affected employee should get the message that this particular conduct is being dealt with as per rules and the organisation has no animosity against him. A sense of detachment, restraint and a judicious approach on the part of

disciplinary authority will give the right message to the employee.

Disciplinary action is a tool in the hands of Management to maintain discipline and order in an organization. In case the tool is not handled properly and carefully, it may harm the cause itself. It is here that the concerned authority has to be very careful about the initiation of action in a transparent manner and should proceed with care and discretion.

Conducting departmental Inquiry presupposes utmost good faith, bonafide and objectivity on the part of the management. We have laid down instructions about the canons of the quasi-judicial approach and the extension of natural justice to the delinquent officer. It is laid down that power has to be exercised prudently and wisely in the best interests and realization of the corporate goals of the management and not arbitrarily or recklessly.

In banking institutions risk-taking forms an integral part of the business. A distinction has to be drawn between a business loss which has arisen as a consequence of a bonafide commercial decision, and an extraordinary loss that has occurred due to any malafide, motivated, or reckless performance of duties. While the former has to be accepted as a normal part of business and the latter has to be viewed adversely and dealt with under the extant disciplinary procedures.

Normally the Association is not to interfere when the employer exercises statutory powers to conduct inquiries and punish erring officers. But these inquiries have to be conducted with their bonafide above board. Whenever the system is abused and such abuse is exposed, there is a fit case for the Association to raise its voice and protest.

It has been observed in some cases that these standards and safeguards were missing. How the tool of discipline has been used to settle scores and strike those who were not in the good

books of the bosses, needs no illustration. We speak of "good faith" and "bonafide", but we sometimes find "malafide" (bad faith), "malice" (desire to harm), victimisation (personal scores with the unwanted), favoritism & nepotism (gifts to near and dear). In some cases, the Power, instead of being used wisely, is misused grossly and abused. There are cases wherein officers have been implicated falsely by the Controllers, got suspended & charge-sheeted based on influenced & concocted investigation reports. But after a thorough & fair enquiry and proper defence, were awarded minor punishment of 'censure' or even 'administrative warning' after the conclusion of enquiry.

The distortions in the management of discipline enforcement in a selective manner and misusing such arbitrary powers on the meeker sections of the officers in the middle management in the guise of taking disciplinary action manifests as deception and fraud in conducting inquiries. It is to be checked by initiating disciplinary action against controllers responsible for the act.

It would not be out of place to mention here that skill, efficiency and perfection never walk hand in hand with greed. An unhealthy strategy if adopted by any of the controllers like mounting unbearable pressure for forced-selling of third-party products leading to miss-selling, sanction of dubious proposals for being number one in the MD matrix etc. would result in damaging the basic tenets of our esteemed institution and compromising the ethos, principles and values. We believe fervently that such unethical practices should be shunned by all, or else the Bank will have to pay a heavy price in the long run and we all will suffer.

We should always remember that every rose has a thorn, so instead of suffering the pain of regret, it is better to suffer the pain of discipline and make our beloved oraganisation blossom like a rose and scale new heights.■

[2022 (174) FLR 162]
(SUPREME COURT)
INDIRA BANERJEE and V.RAMASUBRAMANIAN ,JJ.
Special Leave Petition (Civil) No. 32554 of 2018
with
Special Leave Petition (Civil) No. 9096 of 2019
April 22, 2022
Between
ALLAHABAD BANK and others
and
AVTAR BHUSHAN BHARTIYA

Dismissal-After departmental proceeding –No copy of enquiry report-Appeal filed was also dismissed-High Court in the writ petition of employee, directed the Bank to give enquiry report to the employee with liberty to file appeal-Enquiry report being untraceable the Bank asked the employee to file appeal raising all issues-High Court allowed the writ petition of employee-Order of penalty was set aside-Direction was to provide all consequential benefits including post retiral dues-Hence present appeals by Bank and the employee-Held charges were relating to Government sponsored scheme and the beneficiaries were identified by Government Agency i.e. D.R.D.A.-No bad motive was either attributed to the employee nor proved in the departmental proceedings-No interference with the order of High Court-There was nothing on record to show whether the employee was gainfully employed after his dismissal-Even in his amended pleadings there was no averment relating to his non-employment-High Court rightly granted 50% back wages-No interference with the order of High Court-Both special leave petitions are dismissed. [Paras 26 to 38]

JUDGMENT

INDIRA BANERJEE and V.RAMASUBRAMANIAN,JJ.- Aggrieved by an order of reinstatement with 50% back-wages, but all other consequential benefits in full, passed by the High Court of Judicature at Allahabad, the Management of the Allahabad Bank has come up with one Special Leave Petition and the delinquent Officer has come up with the other Special Leave Petition.

2. We have heard the learned Counsel for the parties.

3. Since one of these Special Leave Petitions is by the Management of the Bank and other SLP is by the delinquent Officer, we shall refer to the parties as ***"the Bank"*** and "***the Officer-employee"***.

4. The Officer-employee was first appointed as a Clerk way back in the year 1974. He was promoted to the post of Junior Manager Grade-II in 1982 and to the post of Manager in 1987. In July, 1988 he was issued with a charge memorandum, comprising of 3 articles of charges. A departmental enquiry followed and the Enquiry Officer held the charges proved. After finding that the Report of the Enquiry Officer was not very happily drafted, the disciplinary authority analysed the evidence on record independently and passed an order of penalty of dismissal from service on 31.03.1989.

5. The Officer-employee filed a departmental appeal under Regulation 17 of the Allahabad Bank Officer Employees (Discipline and Appeal) Regulations, 1976, contending among others, that the findings of the Enquiry Officer were not even enclosed to the final order of penalty.

6. The Appellate Authority, by an order dated 28.02.1990 dismissed the appeal, despite recording a finding that the copy of the enquiry report was not enclosed to the final order of penalty. However, the Appellate Authority attempted to overcome this defect by holding that after the Officer-employee filed the statutory appeal, a copy of the enquiry report was sent to his address on 02.06.1989 and that the same returned undelivered.

7. After filing a petition for Review and getting it dismissed, the Officer-employee moved the High Court with a writ petition in W.P. No. 29426 of 1990. After referring to Regulation 9 of the Allahabad Bank Officer Employees (Discipline and Appeal) Regulations, 1976 which provides for a supply of the copy of the enquiry report, the High Court allowed the writ petition by an order dated 27.04.2011, directing the Management to supply a copy of the enquiry report within one month and giving liberty to the Officer-employee to file a fresh Appeal with a further direction to the Appellate Authority to decide the appeal expeditiously.

8. The Bank filed a Special Leave Petition (C) CC No. 13418 of 2011 and the same was dismissed by this Court by an Order dated

26.08.2011. The Bank then sought a review before the High Court but the same also got rejected.

9. In an interesting twist, the Bank sent a letter dated 8.05.2012 to the Officer-employee, claiming that the copy of the enquiry report was not traceable and that he will be free to submit a statutory appeal, raising all issues. Aggrieved by the stand so taken, the Officer-employee filed a fresh Writ Petition in W.P No. 1403 of 2013. The said Writ Petition was allowed by the High Court of Judicature at Allahabad, setting aside the order of penalty and directing reinstatement with 50% of the back wages, but with all consequential benefits including post retirement benefits to which he would have been entitled had he not been dismissed from service. This was for the reason that the employee attained superannuation on 28.02.2013. The operative portion of the Order dated 01.10.2018 passed by the High Court of Judicature at Allahabad is reproduced as follows:

> "... Resultantly, the writ petition is allowed.
>
> The order dated 31.03.1989 whereby the punishment of dismissal has been imposed upon the petitioner is hereby quashed. We also quash the order dated 15.09.2016 rejecting the statutory appeal preferred by the petitioner against the order of dismissal.
>
> The petitioner will thus be entitled to be given all consequential benefits, including the post retirement benefit to which he would have been entitled had he not been dismissed from service of the bank, for the reason that he has since attained the age of superannuation. We, however, direct that so far as the back wages, including the wages to be determined by giving notional promotions to the petitioner, if any, are concerned, he shall be entitled only to 50% of total back wages. The consequential benefits arising out of this judgment and order shall be made available to the petitioner within a period of two months from the date a certified copy of this order is furnished to the competent authority.
>
> Having regard to the entire facts and circumstances of the case and also considering that the petitioner has been litigating since the year 1990, we also direct cost to be paid by the respondent-bank to the petitioner which we quantify to be ₹50,000/-."

10. It is against the aforesaid order that the Bank has come up with Special Leave Petition (C) No. 32554 of 2018. On 03.01.2019, this Court directed the issue of notice in the said Special Leave Petition limited to the quantum of back wages. The order dated 03.01.2019 passed by this Court reads as follows:—

> "Heard.
>
> We are not inclined to interfere with the impugned order of the High Court insofar as the petitioner-Bank has been directed to pay all the retiral dues to the first respondent.
>
> Issue notice limited to the quantum of back-wages.
>
> In the meanwhile, there shall be stay of the impugned order so far as the back-wages are concerned."

11. Thereafter the Officer-employee came up with Special Leave Petition (C) No. 9096 of 2019, challenging that portion of the impugned order whereby he was deprived of 50% of the back wages. Therefore, on 5.04.2019, this Court ordered the issue of notice in the said Special Leave Petition also and directed the matter to be tagged along with the Special Leave Petition of the Bank.

12. In view of the order passed by this Court on 3.01.2019, the only question that we are called upon to decide is, whether the Officer-employee is not entitled to back wages at all or whether he is entitled only to 50% of the back wages as held by the High Court or whether he is entitled to full back wages.

13. For finding an answer to the above question, we have to see primarily, as to who was at fault.

14. Admittedly, the Bank initiated disciplinary proceedings in terms of Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations 1976, for a major misconduct. The three articles of charges framed against the Officer-employee were as follows:—

"ARTICLE OF CHARGE I

While posted and functioning as Manager, Nighasan Branch during

the year 1986-87 Shri Avtar Bhushan Bhartiya failed to maintain integrity and devotion to duty and did not act with diligence inasmuch as he allowed advances to several borrowers in an indiscriminate manner without observing the norms of the Bank and the spirit of the scheme under which such advances were allowed at a grave risk and has thereby violated Regulation 3(1) of Allahabad Bank Officer Employees' (Conduct) Regulations amounting to a misconduct under regulation 24 of the aforesaid regulations.

ARTICLE OF CHARGE II

While posted and functioning as Manager, Nighasan Branch during the year 1986-87 Shri Avtar Bhushan Bhartiya has failed to maintain integrity and devotion to duty inasmuch as he allowed indiscriminate advances for patthar udhyog in village Jhandi & Khairani in complicity with one Shri Raj Kumar with intent to misutilise the subsidy availed on such advances by not observing the norms of the Bank and the rules of the scheme under which advances were allowed. Shri Bhartiya has thereby violated Regulation 3(1) of Allahabad Bank Officer Employees' violated Regulation, 1976 amounting to a misconduct under Regulation 24 of the aforesaid regulations.

ARTICLE OF CHARGE III

While posted and functioning as Manager, Tikonia Branch in Distt. Lakhimpur during the year 1985, Shri Bhartiya has failed to act with diligence and devotion to duty inasmuch as he failed to conduct appraisal and verification of the identity of Shri Tarsem and has thereby violated Regulation 3(1) of Allahabad Bank Officer Employees' (Conduct) Regulations amounting to a misconduct under Regulation 24 of the aforesaid regulations."

15. The departmental enquiry commenced on 21.11.1988 and concluded on 09.01.1989. The enquiry report dated 09.03.1989 was forwarded to the disciplinary authority vide letter dated 13.03.1989. The disciplinary authority passed an order of penalty on 31.03.1989. It is obvious from the order of penalty dated 31.03.1989 that the copy of the enquiry report was neither sent beforehand nor even enclosed to the order of penalty. Interestingly, the disciplinary authority agreed with the conclusions reached by the enquiry officer but felt that the reasoning was deficient. Therefore, the disciplinary authority chose to analyse the evidence on record independently. The relevant

portion of the order of the disciplinary authority reads as follows:

> "From the enquiry officer's report I find that while holding the charges leveled against Shri Bhartiya in the aforesaid charge-sheet dated 26.7.88 as proved against him he has not analysed the facts brought on the records of the enquiry proceedings and has also not highlighted the merits/demerits of the evidences brought on the records of enquiry proceedings. Accordingly evidences on records of the proceedings would first be discussed and analysed by me chargewise separately each here under as the same exercise has become necessary for the reasons mentioned above."

16. In the statutory appeal filed by the Officer-employee, he raised a specific contention that the enquiry report was not furnished. Despite recording a finding that the copy of the enquiry report was not even enclosed to the final order of penalty, the Appellate Authority attempted to overcome the same on the ground that after the appeal was filed, the copy of enquiry report was sent by post and that the same returned undelivered. The relevant portion of the order of the Appellate Authority reads as follows:

> "Also, a copy of the Enquiry Officer's report/findings, although not enclosed with the Disciplinary Authority's Order, has been subsequently provided to the appellant. However, the same, which was sent at the recorded address of the appellant on 2.6.1989, has been returned undelivered by the Post Office with the remark : "Pane wale bar bar jane par nahi milte, intezar ke bad wapas."

17. At the time when the final order of penalty dated 31.03.1989 was passed and at the time when the appeal was dismissed by the order dated 28.02.1990, the law in this regard was actually in a state of flux. After the decision of the Constitution Bench of this Court in Union of India another v. Tulsiram Patel, a two member Bench doubted its authenticity or applicability to cases where a copy of the enquiry report was not supplied. Therefore, in Union of India and others v. Mohd. Ramzan Khan. The position became very clear after the decision in Managing Director, ECIL, Hyderabad v. B. Karunakar.

18. Therefore, by the time the writ petition challenging the final order

of penalty was decided on 27.04.2011, the law in this regard was no longer res integra.

19. De hors the development of law as aforesaid, the Officer-employee had an advantage in the form of Regulation 9 of the Allahabad Bank Officer Employees (Discipline and Appeal) Regulations 1976. This Regulation 9 reads as follows:—

"9. COMMUNICATION OF ORDERS:

Orders made by the Disciplinary Authority under Regulation 7 or Regulation 8 shall be communicated to the officer employee concerned, who shall also be supplied with a copy of the report of enquiry, if any."

20. Therefore, by the order dated 27.04.2011, the High Court allowed the writ petition of the Officer-employee, on the basis of the above Regulation. The operative portion of the order of the High Court dated 27.04.2011 reads as follows:—

> "In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned appellate order dated 28.2.1990 and the order dated 3.7.1990 (Annexure-8) passed on the review petition. A cost of ₹ 50,000/- is imposed upon the respondents which shall be deposited in this Court within a period of two months. The respondents shall supply a copy of the enquiry report within one month from today. Thereafter, the petitioner may prefer an appeal setting up grounds and pointing procedural illegality including the plea raised before this Court within the next one month. The appellate authority shall decide the appeal, expeditiously say within a period of two months from the date of filing of fresh appeal. In case the cost is not deposited, the same shall be realised through the District Magistrate as arrears of land revenue. It shall be open for the petitioner to withdraw an amount of ₹ 25,000/- and the rest shall be remitted to the Mediation Centre of this Court at Lucknow. Registry to take follow-up action."

21. The aforesaid order of the High Court has attained finality with the dismissal of the SLP on 26.08.2011. The order of dismissal of the SLP reads as follows:

"Delay condoned.

Having considered the pleadings in the case, the materials placed on record and the submissions of the learned Counsel, we do not find any merit in the Special Leave Petition and hence the special leave petition is dismissed."

22. The Bank thereafter took a chance by filing a petition for review before the High Court, but the same also got dismissed on 29.02.2012. Thereafter, the Bank took a very strange position by holding out that the copy of the enquiry report was not traceable. The communication dated 08.05.2012 sent by the Bank to the Officer-employee in this regard reads as follows:

"In reference to the captioned matter we have to advise that the copy of the finding of Enquiry Officer is not traceable and this fact has been brought to the notice of Hon'ble High Court in the writ petition, and also to you vide letter No. ZOLK/ INSPECTION/693 dated 08.09.2011. You are requested to submit your statutory appeal and the same will be considered and you will be provided all reasonable opportunity to put forth your case even personal hearing, if required, will also be afforded to you, but since the copy of finding of Enquiry Officer is not traceable we are unable to provide the same. Kindly bear with us and submit your appeal which will be considered by the Bank on the basis of records available."

23. In view of the aforesaid turn of events, the Officer-employee moved a contempt petition before the High Court. Finding that the Management of the Bank cannot be penalized for not being able to trace the copy of the enquiry report, the High Court closed the contempt petition with liberty to the employee to re-agitate the issue on the basis of the subsequent cause of action. The relevant portion of the order dated 21.05.2013 passed by the High Court in the contempt petition filed by the employee reads as follows:

"…Since by the letter dated 8.5.2012, the respondents had communicated that inquiry report is not available in absence of inquiry report, cause of action arose contrary to finding recorded by the judgment and order dated 27.4.2011. It is open for the petitioner to approach this Court again to ventilate his grievance on the basis of subsequent cause of action…"

24. Therefore, the Officer-employee was driven to the necessity of filing a fresh writ petition in W.P. No. 1403 (S/B) of 2013. During the pendency of the said writ petition, an order was passed by the High Court on 03.08.2016 holding that the stand of the Bank was unacceptable and that in any case an appeal may be preferred and the same may be decided by the Appellate Authority. Accordingly, an appeal was preferred. The Appellate Authority considered the appeal once again but obviously without the copy of the enquiry report and rejected the appeal. This fact is borne out by the impugned order itself, the relevant portion of which reads as follows:

"…During pendency of this writ petition, an order was passed by the Court in these proceedings on 03.08.2016 wherein it has been observed that the stand of the respondent-Bank that enquiry report was not available, cannot be accepted in view of the finding of this Court recorded earlier i.e. the finding recorded in the judgment and order dated 27.04.2011. It was further observed that the obligation cast upon the respondent-Bank has not been carried out on the lame excuse. The Court further observed that the Bank may, however, decide the appeal preferred by the petitioner taking into consideration the direction issued earlier, vide judgment and order dated 27.04.2011."

25. In the light of the aforesaid facts, no great deal of research was necessary on the part of the High Court to arrive at the conclusion that the Management of the Bank was clearly at fault. Therefore, the High Court allowed the writ petition. The operative portion of the impugned order is already extracted earlier.

26. It is not as though the High Court proceeded solely on the basis of the failure of the Management to supply the copy of the enquiry report. The High Court found that the charges related to a Government sponsored Scheme and that the beneficiaries were identified and were short-listed by a Government agency, namely the District Rural Development Agency. The High Court also found that no bad motive was either attributed to the employee nor proved in the departmental proceedings.

27. On the basis of the aforesaid findings, the High Court could have granted all the reliefs in full, including full back-wages. But considering the fact that from the date of his dismissal namely, 31.03.1989, upto the date of his superannuation on 28.02.2013, a

period of nearly 24 years had passed, the High Court thought it fit to limit the back-wages to 50%. In such circumstances, we do not think that the Management can make out any grievance, especially (i) after having violated Regulation 9; (ii) after their failure to point out to the High Court in the first round of litigation that the copy of the enquiry report was not available; and (iii) after their inability to comply with the order of the High Court passed in the first round of litigation, which was also confirmed by this Court.

28. Therefore, the Special Leave Petition filed by the Bank deserves to be dismissed.

29. Having dealt with the SLP filed by the Management, let us now come to the SLP filed by the Officer-employee with regard to the grant of back wages only to the extent of 50%.

30. The learned Counsel for the Officer-employee places heavy reliance upon the decision of this Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED) and others in support of his contention that the grant of full back wages is a normal rule in cases of wrongful termination of service. But the ratio laid down in the said decision cannot be pressed into service by the Officer-employee in this case. This is for the reason that the Officer-employee in this case was originally appointed as a Clerk way back in the year 1974. He was promoted to the post of Junior Management Grade-II in the year 1982 and as Branch Manager in the year 1987. This is why he was governed by the Allahabad Bank Officer Employees (Discipline and Appeal) Regulations, 1976. Courts should always keep in mind the different yardsticks to be applied in the cases of workman category employees and managerial category employees. In appropriate cases, the distinction between labour law and service law may also have to be kept in mind. Many times, Courts wrongly apply, in matters arising under service law, the principles laid down in matters arising under labour laws.

31. As a matter of fact, the propositions elucidated in Deepali Gundu Surwase (supra), read as follows:

> "38. The propositions which can be culled out from the aforementioned judgments are:

28.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4 The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5 The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited.

38.7 The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of

the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

32. Even if we apply the propositions enunciated by this Court in Deepali Gundu Surwase (supra), the Officer-employee may not be entitled to full back wages. This is for the reason that there is nothing on record to show whether he was gainfully employed after his dismissal from service. A careful look at the pleadings in the writ petition W.P. No. 1403 of 2013 would show that he has not pleaded about his non-employment. Though in paragraphs 36 to 38 of his writ petition, the employee has pleaded about the sudden set back to his health in the year 2011 and the financial hardships he was facing, there was no assertion about his non-employment. The employee had his pleadings amended after the dismissal of his appeal during the pendency of the writ petition. Even in the amended pleadings, there was no averment relating to his non-employment. Therefore, even if we apply the ratio in Deepali Gundu Surwase (supra), the employee may not satisfy the third proposition found in para 38.3 thereof.

3. The reliance placed upon the decision in Pawan Kumar Agarwala v. General Manager-II and Appointing Authority, State Bank of India and others may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase (supra). This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.

34. The decision in Fisheries Department, State of Uttar Pradesh v. Charan Singh arose out of an award of the Industrial Tribunal under the U.P. Industrial Disputes Act, 1947. Therefore, the same has no relevance to the case on hand.

35. In Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed and others , this Court referred to the principles laid down in Hindustan

Tin Works (P) Ltd. v. Employees and to the propositions culled out in the Deepali Gundu Surwase (supra). Though this Court held that the denial of back wages in entirety was not justified, this Court awarded only a lump-sum compensation in that case.

36. Therefore, even applying the ratio laid down in various decisions, we do not think that the employee could be granted anything more than what the High Court has awarded.

37. As we have pointed out at the beginning, the total period of service rendered by the Officer-employee before his dismissal from service, was about 15 years, from 1974 to 1989 and he attained the age of superannuation in February, 2013, meaning thereby that he was out of employment for 24 years. The High Court has taken this factor into consideration for limiting the back wages only to 50% and we find that the High Court has actually struck a balance. We do not wish to upset this balance. Therefore, the Special Leave Petition of the Officer-employee is also liable to be dismissed.

38. Accordingly, both the Special Leave Petitions are dismissed, no costs.■

Petitions Dismissed.

(2022 (173) FLR 398]
(CALCUTTA HIGH COURT)
SUVRA GHOSH, J.
W.P.A No. 16222 of 2021
March 2, 2022
Between
STATE BANK OF INDIA
and
RAVI SHANKAR MALANI and others

Payment of Gratuity Act, 1972-Sections 4/5 and 14—Payment of gratuity along with interest-Appellate Authority affirmed the order of Controlling Authority-Hence, present petition-Appointment of respondent was on contract basis-In absence of continuation/renewal of the initial contract during the entire period, it could not be said that respondent rendered

continuous service for 5 years or more-Respondent was governed by the provisions laid down under section 4/5 of Act, 1972-Respondent was not entitled to get gratuity-Orders impugned set aside-Writ petition allowed. [Paras 9 to 15]

JUDGMENT

SUVRA GHOSH, J.-Under challenge in this writ petition are the order of the Controlling Authority passed on 31st July, 2018 and the order of the Appellate Authority passed on 31st July, 2019. In the order impugned the Controlling Authority has allowed the prayer of the private respondent and has held that the private respondent is entitled to payment of gratuity along with interest to be determined up to 31st July, 2018. In the appeal preferred against the said order the Appellate Authority has affirmed the order of the Controlling Authority and has allowed the private respondent to receive gratuity with interest of 10% per annum from 1st July, 2017 till the actual date of disbursement of the gratuity amount. The observation of the Appellate Authority in the said order is set out :

"1. It is a fact that the respondent was appointed in the appellant organization as a contractual Chartered Accountant and he rendered uninterrupted service for more than 8 years.

2. Such appointment will be deemed to be an employee under the provision of the Payment of Gratuity Act even if he is appointed on contractual basis.

3. The law does not distinguish that a contractual employee will be excluded from the provision of the Act as enshrined under section 2(e) of the P.G. Act.

4. The circular issued by the appellant on 18.2.2011 does not indicate that the contractual employee will be disentitled to receive gratuity. The circular is silent in this regard. It cannot be interpreted to the disadvantage of an employee. Gratuity being a beneficial legislation will always uphold liberal interpretation of law.

5. The appellant's statement that the respondent is not covered under bank's Gratuity Fund/scheme is irrelevant as it is contrary to law and inconsistent as per section 14 of the P.G. Act. Such non-inclusion will not take a statutory right of the respondent.

6. It seems apparently clear if such kind of contractual employee are not covered under any regulation of the appellant organisation,

they cannot receive gratuity in any other form or mode.

7. By such negative means, the employer cannot outrightly deprive an employee from receiving gratuity in the guise of non-inclusion in their schemelfund.

8. Further the appellant contention that respondent employee was in receipt of higher salary and he will not receive gratuity, sounds absurd. The definition of an employee does not stipulate any ceiling on salary/wage of an employee under the PG Act as per Ministry of Labour & Employment SO No. 1080 dated 03.4.1997 read with The Payment of Gratuity (Amendment) Act of 2009.

9. The respondent having worked for more than five years, is entitled to receive the gratuity as per section 4 of the P.G. Act."

2. Learned Counsel for the petitioner submits that the appointment of the respondent was purely contractual in nature. The first contract was for a period of three years from 14th November, 2008 to 13th November, 2011 and subsequent appointments continued on the basis of fresh contracts entered into between the employer and the employee. The earlier contracts were not renewed and fresh contracts were executed on fresh terms and conditions. A consolidated package was allowed to the incumbent in each of the contracts. Referring to Clause 9 of the offer of appointment as Chartered Accountant Junior CA-S 1 on contract and CTC basis issued on 19th September, 2008, learned Counsel submits that it was stipulated therein that service of Management Trainees/ Executives would be on contract basis and they not being the permanent employees of the Bank will not be entitled to become members of SBI employees provident fund/pension fund/gratuity fund. Though the respondent worked with the petitioner company for more than five years, the said period cannot be termed as continuous service for the reason that fresh contracts were executed on new terms and conditions after expiry of the earlier contract, which does not amount to renewal of the earlier contract. It was indicated in clear terms in the contracts that the contracts would expire upon expiry of the period stated therein. There being no employer-employee relationship between the parties, the respondent is not entitled to payment of gratuity in terms of the

Payment of Gratuity Act, 1972. The respondent is governed by "contract for service" which is for a particular period and not by "contract of service" which is permanent in nature.

3. Learned Counsel has placed reliance on a judgment of a Coordinate Bench of this Court delivered on 16th July, 2014 in W.P. No. 15864(W) of 2014 which demonstrates that the Regulations of the State Bank of India of 1979 shall prevail over the provisions of the Payment of Gratuity Act, 1972 in view of the special nature of the Regulations.

4. Per contra, learned Counsel appearing for the respondent has submitted that in terms of clause 2 of the offer of appointment issued in favour of the respondent on 19th September, 2008 the contract of appointment is renewable on completion of contractual period depending on the performance, suitability and need of the Bank. In the offer letter dated 26th February, 2011 it is clearly spelt out that the respondent is not entitled to claim any provident fund, pension, new pension scheme or bonus during the period of contract or thereafter. The letter does not indicate that the respondent is not entitled to claim gratuity. The work experience certificate issued by the Bank in favour of the respondent on 30th June, 2017 indicates that the respondent joined the Bank as Credit Analyst on 14th November, 2008 on contract basis and was engaged till 30th June, 2017 until he was relieved as Vice-President. This certificate accepts continuous service of the respondent from 14th November, 2008 to 30th June, 2017.

5. Learned Counsel has drawn the attention of the Court to section 2(e) of the Payment of Gratuity Act, 1972 which defines "employee" as "any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity". According to the learned Counsel, the respondent was in service with the Bank for about 9 years upon periodical renewal of his contracts and is therefore entitled to gratuity.

6. Learned Counsel has placed reliance on a judgment of the Hon'ble Supreme Court in Allahabad Bank and Another v. All India Allahabad Bank Retired Employees' Association.' In dealing with section 5 of the Act of 1972, the Hon'ble Supreme Court has held that "there is no escape from payment of gratuity under the provision of Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government." The Hon'ble Court has also held that gratuity payable to an employee being a statutory right cannot be taken away except in accordance with the provisions of the Act. The same proposition of law is reiterated by an Hon'ble Division Bench of this Court in a judgment delivered on 29th September, 2016 in M.A.T. 1298 of 2012.

7. The appointment of the respondent was admittedly on contractual basis. The letter of appointment issued on 12th November, 2008 for a period of 3 years from 14th November, 2008 to 13th November, 2011 indicates that the contract will be renewable on completion of the contractual period. Clause 4 of the letter suggests that the service of the respondent shall be governed by the Management Trainees/ Executives Service and Conduct Rules, 2004, amendments thereof and instruction /guidelines to be issued /other Rules and Regulations framed by the Bank from time to time. Clause 9 of the 2004 Rules demonstrates that the services of the Management Trainees/ Executives being on contract basis and they not being permanent employees of the Bank will not be entitled to become members of the SBI employees' provident fund/pension fund /gratuity fund. The said Clause of the 2004 Rules was within knowledge of the respondent since inception of his service and remains uncontroverted. The terms and conditions of engagement of officers on contract of the State Bank of India as on 1st April, 2011 has laid down in no uncertain terms that contractual officers may be engaged on a fresh contract after successful completion of the earlier contract. Though there was a renewal clause in the initial appointment offer dated 19th September, 2008, the subsequent contracts do not speak of renewal of the earlier contract and as such, the said clause was not acted upon. Each time a fresh contract has been executed on fresh terms and conditions after expiry of the earlier contract. True, the contract dated 26th February, 2011 states that the respondent shall not be entitled to claim any provident fund, pension, new pension scheme or bonus during the period of contract or thereafter and does not include gratuity. Nevertheless, the petitioner being admittedly governed by the rules framed by the State Bank of India

cannot under any circumstance, raise any claim de hors the rules. The work experience certificate issued by the petitioner on 30th June, 2017 certifies engagement of the respondent with the Bank from 14th November, 2008 to 30th June, 2017 but does not for once demonstrate that the respondent was engaged in continuous service with the Bank for the said period. On the contrary, the offer letters issued in favour of the respondent reveal that a fresh contract was executed after expiry of the earlier one.

8. The judgments cited on behalf of the respondent deals with section 5 of the Act of 1972 which enables the appropriate Government to exempt any establishment to which the Act applies from operation of the provision of the Act. In the judgment in Allahabad Bank and another (supra) the Hon'ble Supreme Court has held that gratuity being a statutory right cannot be taken away except in accordance with the provisions of the Act.

9. There is no quarrel with the said proposition of law as enumerated in the judgments in Allahabad Bank and another (supra) and UCO Bank and others (supra). But the fact situation in the present case is distinguishable. In the case in hand, the rules of the Bank do not entitle the respondent to claim gratuity as he is not termed as a permanent employee of the Bank. In the judgment in Union Bank of India (supra) a coordinate Bench of this Court has decided that in view of the special nature of the Regulations of the Bank, the Regulation shall prevail over the provisions of the Act of 1972.

10. It is a fact that section 14 of the 1972 Act states that the provisions of this Act or any rule made thereunder shall have overriding effect over anything inconsistent therewith contained in any other enactment, instrument or contract. Section 4 of the Act entitles an employee to gratuity on termination of his employment after he has rendered continuous service for not less than 5 years.

11. In the present case, the respondent was appointed for an initial period of 3 years and fresh contracts were issued in his favour subsequently after expiry of every 2 years. In absence of continuation/renewal of the initial contract during the entire period, it cannot be said that the respondent rendered continuous service for 5 years or more. In the premise, the respondent is not governed by the provisions laid down under section 4/5 of the Act of 1972 and is not entitled to reap the benefits offered by the same.

12. In view of the 2004 Rules of the Bank and the terms and conditions of engagement of contractual officers of the Bank as on 1st April, 2011, which govern the service of the respondent, the respondent is not entitled to claim gratuity for the service rendered by him.

13. In the result, the writ petition being 16222 of 2021 is allowed.

14. The order passed by the Deputy Chief Labour Commissioner (Central) Kolkata and Appellate Authority under the Payment of Gratuity Act, 1972 passed on 31st July, 2019 in Appeal No. 48/(09)/2019. E.DY CLC(C) is set aside/quashed following which the order passed by the Assistant Labour Commissioner (Central) and Controlling Authority under The Payment of Gratuity Act, 1972 on 31st July, 2018 in Case No. 48/(01)/2018/E.3 is also set aside/quashed.

15. The petitioner is at liberty to withdraw the amount deposited before the Appellate Authority by demand draft as per letter dated 25th September, 2018.

16. There shall however be no order as to costs.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities. ■

Petition Allowed.

[2022 (173) FLR 484]
(SUPREME COURT)
AJAY RASTOGI and ABHAY S.OKS, JJ.
Civil Appeal No. 1457 of 2022
February 18, 2022
Between
REGIONAL MANAGER, UCO BANK and another
And
KRISHNA KUMAR BHARDWAJ

Disciplinary Enquiry-Constitution of India 1950-Article 226-Respondent delinquent was serving as an Assistant Manager, Sewal Branch when the incident of theft was reported-Respondent delinquent being one of the joint custodian of cash was responsible

for safety of keys of cash/strong room and failed to take all precautionary steps as being indicated in the guidelines of Bank-Disciplinary Authority, after affording opportunity of hearing to respondent delinquent concurred with the findings of the Inquiry Officer, inflicted penalty of dismissal from service with disqualification for future employment-Neither Single Judge nor Division Bench of High Court has taken pains to look into the finding which was recorded by Inquiry Officer in reference to charge Nos. 1 and 4 and appreciated thereafter by Disciplinary/Appellate Authority in passing of order of penalty inflicted upon the respondent delinquent –Held the finding which has been recorded by High Court in the impugned order is unsustainable and not supported with the report of inquiry-available on record-High court has exceeded in its jurisdiction while interfering with disciplinary proceedings initiated against respondent delinquent-Appeal is allowed.[Paras 3,7,8,21,26 and 27]

Constitution of India, 1950-Article 136/226-judicial review-Power of Judicial review in the matters of disciplinary inquiries, exercised by departmental/Appellate Authorities discharged by Constitutional Courts under Article 226 or Article 136 of Constitution of India is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an Appellate Authority-Appeal is allowed.[Paras 18 and 27]

JUDGMENT

AJAY RASTOGI,J.- Leave granted.

2. The instant appeal is directed against the judgment and order dated 21st January, 2021 passed by the Division Bench of the High Court of Allahabad affirming the order of the learned Single Judge dated 19th October, 2019 pursuant to which the inquiry proceedings and consequential punishment inflicted upon the respondent delinquent were quashed and set aside.

3. The respondent delinquent was serving as an Assistant Manager, Sewla Branch on 10th/11th November, 1999 when the incident of theft was reported. The respondent delinquent being one of the joint

custodian of cash was responsible for safety of keys of cash/strong room and failed to take all precautionary steps as being indicated in the guidelines of the Bank and because of the alleged negligence on the part of the respondent delinquent in handling the keys in inappropriate manner resulted into theft/loss of cash from the cash safe. For such delinquency committed by him in discharge of his official duties, he was placed under suspension in exercise of power conferred under Regulation 12 of the UCO Bank Officers Employees (Discipline & Appeal) Regulations 1976(hereinafter being referred to as the "Regulations 1976") by an Order dated 29th November, 1999.

4. Later, charge-sheet dated 7th December, 1999 along with four article of charges was served and by a corrigendum dated 13th March, 2000, additional charge No.5 was served upon him. It may be appropriate to quote the extract of articles of charges, dated 7th December, 1999 along with additional charge No.5 by a corrigendum dated 13th March, 2000 as under:

> 1. Being one of the joint custodians of cash, Mr. K.K. Bhardwaj was responsible for safety of keys of cash/strong room, he did not keep the eyes in his person as per guidelines of the Bank, instead left the keys in the branch premises over-night in an almirah in contravention to the guidelines for safety of keys of cash safe/strong room. He was most negligent and his handling the keys in a perfunctionary manner resulted into theft/loss of cash of ₹ 12.00 lacs from the cash safe.
>
> 2. Mr. K.K. Bhardwaj, being one of the joint custodians of cash, did not arrange to remit the surplus cash on 10.11.1999 to Currency Chest, Belanganj Branch, Agra even though there was huge cash balance much more than the average, anticipated daily requirement. Thus, he did not take all possible steps to ensure and protect the interest of the Bank and did not discharge his duties with utmost devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officer Employees(Conduct) Regulations, 1976 as amended.
>
> 3. Before leaving the branch on 10.11.1999 after close of cash, Mr. K.K. Bhardwaj did not check about the closure of one rear gate between the main hall and passage towards toilet of Sewla Branch, Agra which was left unlocked/opened on 10.11.1999.

> Thus, he did not take take all possible steps to ensure and protect the interest of the Bank and failed to discharge his duties with utmost devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officers Employees (Conduct) Regulations, 1976 as amended.
>
> 4. Mr. Bhardwaj did not maintain the key register for noting the transfer of keys from one holder to another. He himself along with Chief Cashier had not signed the key register on taking over charge of the keys of cash safe/strong room of the branch. Thus, he failed to discharge his duties with devotion and diligence which is violative of Regulation 3(1) of UCO Bank Officer Employees (Conduct) Regulations, 1976 as amended.
>
> 5. That Mr. K.K. Bhardwaj was in hand and glove with some person with an ulterior motive in perpetration of theft of cash at Sewla Branch for ? 12.00 lacs on 10th/11th November, 1999. Thus he failed to discharge his duties with utmost integrity and honesty, which is violative of Regulation-3 of UCO BANK Officers Employees (Conduct) Regulation, 1976 as amended."

5. The inquiry officer conducted departmental inquiry in terms of the procedure prescribed under the scheme of Regulations, 1976 and after affording opportunity of hearing and due compliance of principles of natural justice, held charge Nos. 1,3 and 4 proved vide report dated 31st July, 2001. However, charge Nos. 2 and 5 were not held proved.

6. It is an admitted fact that the date on which the theft was committed, i.e. 10th/11th November, 1999, Mr. Vinod Kumar Khanna was the Manager of Sewla, Agra Branch. During that period, the present respondent was Assistant Manager and one Mr. K.L. Khandelwal was the Assistant Manager(Cash). Apart from them, four other clerks were posted at Sewla Branch and Mr. Vinod Kumar Khanna was not on duty on the day when the incident had taken place. The signatures of custodian - the present respondent delinquent and Mr. K.L. Khandewal Assistant Manager(Cash) were confirmed and in support thereof, document ME-2/1 to ME-2/5 were placed on record.

7. The statement of fact was duly recorded by the Inquiry Officer in his report that the respondent delinquent was custodian of keys on

the day, i.e., 10th/11th November, 1999 when the theft was committed and he was one of the joint custodian of cash and responsible for safety of keys/cash. After due appreciation of documentary evidence placed on record, the Inquiry Officer found charge Nos. 1, 3 and 4 proved against the respondent delinquent. After due appreciation of the documentary evidence on record, the extract of the findings which has been recorded, after detailed scrutiny of facts, by the Inquiry Officer in his report for arriving to a conclusion in holding charge Nos. 1, 3 and 4 proved against the respondent delinquent are referred to hereunder:-

"Charge No.1

Findings of the Inquiry Officer :-

I have fully examined the contentions of P.O.& DR/C.S.0. and my findings in this regard are as under:

Considering all the facts and material placed before me during the inquiry proceedings by the concerned parties, I concur with the arguments advanced and facts established by the Presenting Officer, who has established the facts relating to charge No.1 on the basis of ME-2/ 1 to 5, ME- 6/1 & 2, ME-10,, ME-10/1&2, ME-11, ME-3, ME-13, ME- 12, ME-14, ME-15, ME-20, ME-27, DE-30, DE-31/1&2, DE-32, ME-1/5, ME-23, ME- 24, DE-2/1to15.

I, therefore, hold that charge No. 1 stands proved against Mr. K.K. Bhardwaj, C.S.O.Charge No.3.

Findings of the Inquiry Officer :-

I have fully examined the contentions of P.O. and DR/CSO and my findings in this regard are as under:-

Considering all the facts and material placed before me during the inquiry proceedings by the concerned parties, I concur with arguments advanced and facts established by the Presenting Officer, who has established the facts relating to charge No. 3 on the basis of documentary evidence, namely, ME-3, ME-12, ME-13, ME-14, ME-15, ME-16, ME-17 & ME-18. As per ME-14 the C.S.O. had left the branch at about 4.45 p.m. on 10.11.99, and as per ME-12 and ME-13 the Manager, Mr. V.K. Khanna had

left the branch on 10.11.1999 at about 2.00 p.m. by informing to the Asstt. Manager, Mr. K.K. Bhardwaj. It is the bounden duty of the Manager to ensure the security of the branch and in absence of the Manager it automatically passes on to the Asstt. Manager, who is second-in-command in the branch. As such, the asstt. Manager Mr. K.K. Bhardwaj while leaving the Sewla branch on 10.11.1999, in absence of the Manager, must have fully ensured about the safety and security of the branch in view of alarming/huge cash accumulation (? 27,84,002.17) in the branch as at the close of business on 10.11.99. Laxity in security is also evident from ME-15. So, it is well substantiated by P.O. that the Asstt. Manager was lacking in his duty while leaving the branch on 10.11.99 in absence of the Manager, in the matter of security and safety of the branch.

I, therefore, hold that charge No. 3 stands proved against Mr. K.K. Bhardwaj, C.S.O.

Charge No.4

Findings of the Inquiry Officer:

I have fully examined the contentions of P.O. & DR/CSO and my findings in this regard are as under: -

Considering all the facts and material placed before me during the inquiry proceedings by the concerned parties, I concur with the arguments advanced and facts established by the Presenting Officer, who has established from ME-6/1&2 that "A record of custody of all important keys should be carried in a key Register. All changes in the custody of keys should be promptly made therein under the signatures of the custodians."

ME-8 & ME-22/ 1&2 confirm the incomplete records of the postings in the Key Register's relating to Asstt. Manager and Asstt. Manager (Cash) since 1.8.1995 and 2.7.1994 respectively.

It is established from above records that the Asstt. Manager and the Asstt. Manager (Cash) who were the joint custodians at Sewla Agra branch, had not signed the respective key registers on taking over charge of the keys of Cash Safe/Strong Room of the branch and did not maintain the Key Registers uptodate.

I, therefore, hold that Charge No. 4, stands proved against Mr. K.K. Bhardwaj, C.S.O."

8. The disciplinary authority, after affording opportunity of hearing to the respondent delinquent, concurred with the findings of the Inquiry Officer and after due compliance of principles of natural justice, inflicted the penalty of dismissal from service vide Order dated 31st December, 2001 with disqualification for future employment.

9. The order of the disciplinary authority came to be challenged by the respondent in the departmental appeal before the appellate authority. The appellate authority, after revisiting the record of inquiry, found justification in the submissions made by the respondent delinquent with regard to charge No. 3 but so far as the finding in reference to charge Nos. 1 and 4 is concerned, the appellate authority concurred with the finding recorded by the inquiry officer and confirmed by the disciplinary authority in exercise of power under Regulation 17 of the Regulations, 1976 and modified the punishment by its Order dated 23 rd December, 2002, the extract of which is as under:

"I, therefore, in exercise of powers vested in me as Appellate Authority, and in terms of Regulation 17 of UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976, as amended, pass the following Order :

Charge No. 1
Proved
Shri K.K. Bhardwaj (PFM No. 23213) shall be compulsorily retired from Bank's service.

Charge No. 2
Not Proved
Exonerated

Charge No. 3
Not Proved
Exonerated

Charge No. 4
Proved
The Basic Pay of Shri Bhardwaj be reduced by two stages in the time

scale of pay for a period of 4 (four) years. It is further directed that he will earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments

Charge No. 5
Not Proved
Exonerated

The above punishments shall run concurrently, However, since no moral turpitude is being found against Shri Bhardwaj, he will be paid with all terminal benefits payable to him."

10. The order passed by the appellate authority came to be challenged by the respondent under Article 226 of the Constitution. The learned Single Judge, after taking note of the record of inquiry, arrived to the conclusion that Mr. Vinod Kumar Khanna was the Branch Manager on the date when the incident had occurred, i.e., 10th/11th November, 1999 and the joint responsibility was of the Branch Manager and the Assistant Manager(Cash). Since the present respondent delinquent was the Assistant Manager, he could not be held to be responsible for lapses and set aside the order of punishment inflicted upon the respondent delinquent under its Order dated 19th October 2019.

11. On Letters Patent Appeal preferred at the instance of the present appellant, the Division Bench under the impugned judgment has not taken care to examine the report of inquiry and has just reproduced the findings recorded by the learned Single Judge under the order impugned and dismissed the appeal by an Order dated 21st January, 2021 which is the subject matter of challenge before us.

12. For completion of facts, it may be relevant to note that the factual error was committed by the learned Single Judge and the Division Bench in passing the impugned judgment that Mr. Vinod Kumar Khanna, who was the Manager of Sewla, Agra Branch at that time, was also served with the charge-sheet and he too faced departmental inquiry but the allegation against him was that despite being fully aware that the respondent delinquent was the custodian of cash(keeping the keys of the cash safe/strong room in an almirah in

the stationery room overnight) and not keeping the same in his personal custody as per rules of the Bank, he did not take appropriate steps against the staff who was reportedly keeping overnight safety of the keys of the chest in the Branch itself which was a gross negligence which he had committed in discharge of his duties as a Manager of the Branch and for his supervisory negligence, after charge-sheet dated 17th December, 1999 came to be served, he too was held guilty for his supervisory negligence which he had committed in discharge of his duties and was punished by an Order dated 28th February, 2002.

13. Learned counsel for the appellants submits that for the gross misconduct which the respondent had committed in discharge of his duties, the inquiry was conducted in accordance with the procedure prescribed under the Regulations 1976 and it was never the case of the respondent either before the departmental authorities or before the High Court that the inquiry has not been conducted in accordance with the procedure prescribed under the scheme of Regulations, 1976 or the record which was relevant to the charge, and demanded by him, was not made available to him and what prejudice has been caused to him on account of non availability of record or the orders passed by the disciplinary/appellate authority are in violation of principles of natural justice while upholding the findings of the inquiry officer in reference to charge Nos. 1 and 4 and consequential punishment inflicted upon him.

14. At the same time, learned counsel further submits that the learned Single Judge of the High Court has proceeded on the premise that it was the Manager and Assistant Manager(Cash) who were responsible officers and because of their negligence, theft has been committed on 10th/11th November, 1999 from the cash safe of the Branch which appears to be factually incorrect. It was the respondent delinquent who was the custodian and in-charge of keys at the relevant point of time along with Assistant Manager(Cash) and the finding was recorded by the Inquiry Officer supported by the documentary evidence on record and this was never questioned by the respondent delinquent at any later stage even when he was served with the inquiry report or to the disciplinary or appellate authority while assailing the finding recorded by the inquiry officer in his report. This is the manifest error which the Division Bench of the High Court

has committed in interfering with the domestic inquiry conducted against the respondent delinquent in which charge Nos. 1 and 4 were finally held proved against him. In the given circumstances, the interference made by the High Court in the impugned judgment is not sustainable and deserves to be interfered with by this Court.

15. Per contra, learned counsel for the respondent, on the other hand, submits that respondent was the Assistant Manager and the responsibility was of the Manager of the Branch and the Assistant Manager(Cash) and submits that the finding recorded by the inquiry officer in his report is perverse and not sustainable.

16. Learned counsel further submits that the plea was raised by him against the inquiry officer being biased but no one has paid heed to his request and further submits that the documents demanded by him were not made available despite request and the orders passed by the disciplinary/appellate authority being non speaking and cryptic in nature are otherwise not sustainable in law.

17. We have heard learned counsel for the parties and perused the material available on record with their assistance.

18. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 136 of the Constitution of India is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has earlier been examined by this Court in B.C. Chaturvedi v. Union of India and Others Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya and recently by a threeJudge Bench of this Court (of which one of us is a member) in Deputy General Manager (Appellate Authority) and Others v. Ajay Kumar Srivastava wherein this Court has held as under:

> "24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules

of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or

surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

28. The constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."

19. Adverting to the facts of the instant case, the Division Bench has proceeded on the premise that the responsibility was of the Branch Manager along with the Assistant Manager(Cash). Hence, the respondent could not have been held responsible for the lapses of those officers and proceeding on the said foundation, set aside the penalty inflicted upon the respondent delinquent but the record of enquiry clearly manifests that it was a factual error being committed by the High Court while setting aside the domestic inquiry and the consequential punishment inflicted upon the respondent delinquent.

20. In the course of enquiry, a documentary evidence came on record that although Mr. Vinod Kumar Khanna was the Manager of the Branch but the date, i.e., 10th/11th November, 1999 on which the theft was committed, the custodian of cash were the respondent along with the Assistant Manager(Cash). The finding has been recorded by the inquiry officer in his report holding that the respondent delinquent was the custodian of cash in keeping the keys in cash safe/strong room in the almirah of the stationery room overnight and not keeping the same in his personal custody as per rules of the Bank along with Assistant Manager(Cash). The finding of fact was confirmed by the Disciplinary/Appellate Authority in upholding the guilt of the respondent as he had failed in discharge of his duties as a custodian when the theft had taken place on 10th/11th November, 1999 but the High Court in the impugned judgment has not taken pains to examine the finding recorded by the inquiry officer in reference to the responsibility which the respondent delinquent failed to discharge as a custodian of cash at the relevant point of time when the theft was committed.

21. That apart, what has been recorded by the inquiry officer has been revisited by the disciplinary/appellate authority and after re-appreciation of record of inquiry and due application of mind, the appellate authority while exonerating the respondent delinquent from charge No. 3 held charge Nos. 1 and 4 proved against him and punished him by an order dated 23rd December, 2002. Neither the learned Single Judge nor the Division Bench of the High Court has taken pains to look into the finding which was recorded by the inquiry officer in reference to charge Nos. 1 and 4 and appreciated thereafter by the disciplinary/appellate authority in passing of the order of penalty inflicted upon the respondent delinquent.

22. In our considered view, the finding which has been recorded by the High Court in the impugned order is unsustainable and not supported with the report of inquiry available on record.

23. The submission made by learned counsel for the respondent that the inquiry officer was biased and that caused prejudice to him, suffice it to say, that merely making allegation that he was biased is not sufficient unless supported by the material placed by him either during the course of inquiry or before the disciplinary/appellate authority. Even no submission was made before the High Court also and it deserves no consideration except rejection.

24. So far as the submission regarding non-supply of document is concerned, inquiry officer has observed that the record which was demanded by the respondent delinquent was made available to him except the one which was confidential in nature still he was permitted for inspection. At the same time, the respondent failed to show as to what prejudice has been caused to him in reference to the alleged non-supply of the documents demanded by him.

25. The further submission of learned counsel for the respondent that the decision of the disciplinary/appellate authority being a non-speaking and cryptic in nature is concerned, it is a sorry state of affairs to say so that both the orders of the disciplinary/appellate authority are on record and cogent reasons have been assigned while concurring with the finding of the inquiry officer in order of the disciplinary authority. The appellate authority also, after due appreciation of the record of inquiry and confirmed by the

disciplinary authority, arrived to the conclusion that the finding recorded in reference to charge no. 3 is not proved and held charge Nos. 1 and 4 proved on the basis of which he was persuaded to modify the punishment under the Order dated 23rd December, 2002.
26. In our considered view, the High Court has exceeded in its jurisdiction while interfering with the disciplinary proceedings initiated against the respondent delinquent and being unsustainable deserves to be set aside.

27. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 21st January, 2021 is accordingly quashed and set aside. No costs.

28. Pending application(s), if any, stand disposed of.■

Appeal Allowed.

2022-III-LLJ-194 (All)
LNINDORD 2022 LUCK 1
IN THE HIGH COURT OF ALLAHABAD
Present:
Hon'ble Mr. Justice Rajesh Singh Chauhan
Writ –A No. 3793 of 2022
9th June, 2022
Neeraj Chaturvedi .... Petitioner
Versus
Central Bank of India and Others .... Respondents

Employment-Transfer-Petitioner-employee challenged order transferring employees in different Zones serving at Bank from one place to another, and also challenged order directing Petitioner to be relieved from his present place of posting, hence this petition-Whether, impugned transfer order liable to **be quashed-Held, no good reason to implement transfer policy i.e.,'Rotational Transfer' ignoring para 1.2 of same policy-Petitioner's wife had 100% disability but still had confidence in back of her mind that her husband residing at specified place would look-after her in critical situation –If Petitioner compelled to submit his joining at another specified place, wife of Petitioner will suffer irreparable loss-No post available in specified Region and Petitioner not permitted to serve anywhere at specified Region –Transfer is an exigency/incidence**

of service and no courts interfered with transfer orders but if such transfer may be avoided for any specific compelling reason and that reason is unavoidable, the Competent Authority being model employer should consider such condition sympathetically-Impugned order of transfer of Petitioner, quashed-Petition allowed.

JUDGMENT

Mr. RAJESH SINGH CHAUHAN, J.

Heard Sri Shireesh Kumar, learned counsel for the petitioner and Sri Gopal Kumar Srivastava, learned counsel for the respondents-Bank.

2. By means of this writ petition, the petitioner has assailed the order dated 16.04.2022 passed by the opposite party No.1 transferring as many as 163 employees in different Zones serving at Central Bank of India from one place to another. The petitioner, whose name finds place at serial No.132, has been transferred from Lucknow to Cooch Behar, Kolkota. The petitioner has also assailed the order dated 20.04.2022 whereby he has been directed to be relieved from his present place of posting.

3. The petitioner is serving on the post of Officer (Scale-II) in Central Bank of India.

4. At the very outset, learned counsel for the petitioner, Sri Shireesh Kumar, has drawn attention of this Court towards Annexure No.3 of the writ petition, which is Unique Disability ID issued by the Competent Authority of the Government of India relating to wife of the petitioner, namely, Smt. Priya Chaturvedi, who is permanent disable person having 100% disability.

5. Further attention of this Court has been drawn by learned counsel for the petitioner towards the policy/norms framed on Transfer of Mainstream/ Specialized Officer in Scale-I, II & III of the Bank. Sri Shireesh Kumar has referred para-1.2 of the aforesaid policy, which reads as under:

> "1.2 In respect of transfers/ posting of physically challenged officers, with benchmark disability and Officer who is

> caregiver of dependent daughter/ son/ parents/ spouse/ brother/ sister with 'Specified Disability' as certified by the certifying authority, as a Person with Benchmark Disability, as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016, in terms of DOPT guidelines O.M.No.42011/3/2014- Estt (Res) dated 8th October, 2018, bank shall follow the guidelines issued by Govt. of India from time to time, subject to administrative constraint."

6. Since one memorandum of DOPT dated 08.10.2018 has been referred in the aforesaid guideline of the Bank so Sri Kumar has demonstrated such office memorandum being issued by the DOPT dated 08.10.2018 which has been annexed as Annexure No.5 to the writ petition. He has drawn attention of this Court towards para-3 (i) & (iii) of the aforesaid office memorandum of DOPT dated 08.10.2018, which read as under:

> "(i) A Government employee who is a care-giver of dependent daughter/ son/ parents/ spouse/ brother/ sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.
>
> (iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfers/ rotational transfer by the Government employee, who is a care-giver of dependent daughter/ son/ parents/ spouse/ brother/ sister as stated in para-3 (i) above."

7. Sri Shireesh Kumar, learned counsel for the petitioner has submitted that so as to understand the meaning of 'care-giver', 'benchmark disability' and 'permanent disability', the relevant provision of Rights of Persons with Disabilities Act, 2016 (here-in-after referred to as the "Act, 2016") may be perused. Section 2 (d) of the Act, 2016 defines 'care-giver', Section 2 (r) defines 'benchmark disability' and Section 2 (s) defines 'person with disability', for convenience, Section 2 (d), (r) & (s) are being reproduced here-in-below:-

and with full knowledge of consequences. [Para 14]

"2 (d) "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;

(r) "person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."

8. As per Sri Kumar, the present petitioner being care-giver of his wife who is permanent disabled, may be given the benefit of own policy of the Bank vide item No.1.2 (supra). As per the aforesaid protection, any transfer of employee be it routine transfer or rotational transfer may be exempted from such transfer.

9. Sri Kumar has further submitted that vide office order dated 20.04.2022 (Annexure No.8) the petitioner was directed to get himself relieved but he has not been relieved as he has not submitted any application for relieving, as recital to this effect has been given in para-31 of the writ petition. However in para-32 of the writ petition, it has been indicated that out of so many posts of Manager/ Officer in the rank of the petitioner are vacant in Lucknow Region and the petitioner may be accommodated against any post in such Region inasmuch as if he is compelled to submit his joining to Cooch Behar, Kolkata which is about 1500 KM from Lucknow, he would not be able to look-after his wife, who is requiring permanent care from her husband.

10. Therefore, Sri Kumar has submitted that the impugned transfer order, so far as it relates to the petitioner, may be stayed and the petitioner may be accommodated at anywhere at Lucknow Region if he may not be permitted to be posted at a place from where he has been transferred to Cooch Behar, Kolkata.

11. Per contra, Sri Gopal Kumar Srivastava, learned counsel for the opposite parties has submitted that the present petitioner is serving at Lucknow Region for the last about 28 years and as per the same Transfer Policy/ Guidelines, any officer who has completed 10 years at one place/zone shall be transferred to another place/zone. Therefore, pursuant to the aforesaid policy the present petitioner has been transferred from Lucknow Zone to another zone.

12. Sri Srivastava has further submitted that on earlier occasion the similar grievance of the petitioner has been considered sympathetically, therefore, he has been retained at Lucknow Zone for about 28 years.

13. Sri Srivastava has also submitted that wife of the petitioner is serving on the post of Telephone Attendant in Secretariat Telephone Exchange, Lucknow.

14. Sri Shireesh Kumar, learned counsel for the petitioner has not disputed the aforesaid submission of learned counsel for the opposite parties, however, he has submitted that she has been given such appointment under the handicapped quota.

15. Sri Srivastava has also apprised the Court that the petitioner has already been relieved on 09.05.2022 and in his place one incumbent has already joined, therefore, it may not be possible for the Bank to permit the petitioner to serve on the same post at the same place. He has also submitted on the basis of instructions that in the Lucknow Region almost all the vacancies are already filled up.

16. Learned counsel for the parties are agreeable that the matter may be disposed of finally at the admission stage as the submissions of learned counsel for the parties have been considered.

17. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that if there is any beneficial or compassionate policy to accommodate any employee for the specific and certain reason, the same must be abide by in its letter and spirit.

18. Since wife of the petitioner is a permanent disable person having 100% disability and to look-after and take care of her is a sole responsibility of the petitioner, then his status shall come within the meaning of term 'care-giver' as defines under Section 2 (d) of the Act, 2016. On account of disability of wife of the petitioner, she is a person with the 'benchmark disability' and a 'person with disability' as per the meaning of Section 2 (r) & (s) of the Act, 2016. If the Competent Authority of the Bank has transferred the petitioner in compliance of the Transfer Policy/ Guidelines which provides that whosoever has completed 10 years of service at one place shall be transferred from one zone to another zone, then the same policy also clearly indicates vide para 1.2 that a transfer/ posting of a spouse etc. of a person with 'benchmark disability' or long term disability, shall be exempted from routine/ rotational transfer in terms of DOPT Guidelines dated 08.10.2018. The DOPT Guidelines (supra) clearly provides that such government employee may be exempted from routine transfer/ rotational transfer subject to the administrative constraints. A routine/ rotational transfer, which has been made in compliance of the guidelines, may not be considered as administrative constraint. Besides, if the same policy is providing two separate guidelines, the guideline which is of beneficial nature shall prevail over the general guidelines inasmuch as the beneficial guideline is issued to serve a particular purpose and if such guideline is flouted it may cause an irreparable loss to a person which, generally, cannot be compensated in terms of money.

19. Therefore, I do not find any good reason to implement the policy vide para-3 i.e. 'Rotational Transfer' ignoring the para 1.2 of the same policy (supra). The rotational transfers are meant for a person who has not been protected by any compassionate or beneficial policy but if any employee has been protected from any beneficial or compassionate policy, the same may not be ignored unless there is any administrative reason to transfer such person from one zone to another zone.

20. In the present case, the wife of the petitioner is serving on the post of Telephone Attendant in Secretariat Telephone Exchange at Lucknow despite having 100% disability and while discharging her duties on such post she has confidence in the back of her mind that her husband is residing at Lucknow to look-after her in a critical situation, if need be, but if the petitioner is compelled to submit his joining at Cooch Behar which is about 1500 KM from

Lucknow, the wife of the petitioner may likely to suffer irreparable loss.

21. Now, the question that there is no post available in Lucknow Region and the petitioner may not be permitted to serve anywhere at Lucknow Region, I am unable to comprehend that when the petitioner has earlier been retained at Lucknow considering his aforesaid grievance then as to why his grievance has not been considered now inasmuch as the grievance of the petitioner is of permanent nature.

22. Normally, the transfer is an exigency/ incidence of service and no courts are ordinarily interfered with the transfer orders but if such transfer may be avoided for any specific compelling reason and that reason is unavoidable, the Competent Authority being model employer should consider such condition sympathetically. At the same time the transfer may not be punitive in nature and in the present case if the petitioner is directed to submit his joining at Cooch Behar, Kolkata, it would cause irreparable mental pain to him that he would not be able to look-after and take care of his wife which would cause irreparable mental injury to her also.

23. Therefore, considering the peculiar facts and circumstances of the issue in question, I hereby allow the present petition at the admission stage. The impugned order dated 16.04.2022 (Annexure No.6), so far as it relates to the petitioner, to be more precise the transfer of the petitioner is concerned, is hereby quashed.

24. Since in place of petitioner someone has submitted his joining, as informed by Sri Gopal Kumar Srivastava as per instructions, therefore, the opposite parties are directed to accommodate the petitioner at any suitable place at Lucknow Region, be it in a rural areas or urban areas as per the convenience of the authorities and appropriate order to that effect shall be issued forthwith, preferably, within a period of fifteen days from the date of receipt of a certified copy of this order. The petitioner is also directed to submit his joining at a place where he is directed to submit his joining in compliance of this order forthwith.

25. However, no order as to cost.■

Petition allowed.

[2022 (173) FLR 620]
(CALCUTTA HIGH COURT)
SOUMEN SEN and AJOY KUMAR MUKHERJEE, JJ.
F.M.A.T.No.921 of 2013
March 14, 2022
Between
STANDARD CHARTERED GRINDLAYS BANK RETIRED EMPLOYEES ASSCN. and others
and
STANDARD CHARTERED BANK and others

Industrial Disputes Act 1947-Section 33 (2)-Civil Procedure Code, 1908-Order VII, Rule 1 and Rule 11 (a) –Implementation of Bhave Award-Denial extension of benefit of upward revision in pensionary benefits to the employees of defendant Bank-Interim settlement arrived between Bank and employees association regarding ad hoc interim increase in the quantum of pension to all the employees irrespective of their dates of retirement-By means of a comprehensive memorandum of settlement there was an increase in quantum of monthly pension for various categories of retired employees and future pensioners-Bank however refused to extend such benefits to the employees retired prior to the said date-Retired employees raised industrial dispute under section 33-C (2) of Act which was rejected on the ground of maintainability-They invoked writ jurisdiction where there was a direction to approach civil Court-Civil suit filed by them was dismissed on the ground that they had no cause of action-Hence the instant appeal-Held suit was filed on the basis of direction of learned Single Judge as well as Division Bench-Once it was established that plaintiff had a cause of action and the plaint discloses a cause of action the Court is not called upon at the stage assessing a demurrer to decide whether the case was likely to fail-Only consideration was whether the plaint disclosed the cause of action against the defendants-Order of Trial Court set aside-Matter remitted back-Appeal disposed of. [Pras 18 to 26]

JUDGMENT

SOUMEN SEN, J.- By consent of the parties the appeal and the applications are take up together and disposed of by this common order.

2. The appeal is arising out of a judgment and order dated 21st June, 2013 in connection with an application filed by the respondent/ defendant No.1 bank on 22nd June, 2012 under Order VII Rule 11(a) of the Code of Civil Procedure.

3. The learned Trial Judge allowed the said application on contest and dismissed the suit.

The appellants are aggrieved by the said order.

4. The plaintiff filed a suit on 26th August, 2009 praying inter alia for a declaration that the defendant No. 1 Bank is bound to act in terms of Bhave Award dated 26th September, 1994 and interim settlement made between the defendant No. 1 Bank and its employees on 24th September, 2001 as modified by the settlement dated 29th November, 2007 and the defendant No. 1 Bank is bound and obliged to give all benefits in terms of the said two settlements. The other prayers of the plaint are arising out of said two settlements.

5. The plaintiffs alleged that after the signing of the terms of settlement dated 24th September, 2001 the defendant No. 1 bank had failed and/or refused to implement the provisions of the Bhave Award in its true spirit by not extending the benefit of upward revision in pensionary benefits to the employees of the defendant No. 1 bank, who retired prior to 1st November, 2001. It is also alleged that the rights of the ex-employees of the respondent/defendant No.1 bank represented by the plaintiff No. 1 association and/or union have been denied by the respondent/ defendant No.1 bank.

6. The respondent/defendant No.1 bank entered appearance into the suit on 7th June, 2010 and thereafter on 22nd December, 2010 filed a written statement. The learned Trial Judge framed issues on 2nd December, 2012. The suit was fixed for peremptory hearing on 22nd June, 2012. On that very date the respondent/defendant No.1 bank filed an application under Order VII Rule 11(a) of the Code of Civil Procedure.

7. In order to appreciate the scope of the said application it is necessary to briefly indicate the case made out by the plaintiff in the suit.

8. The plaintiff claimed that the plaintiff's Union granted registration under the Trade Union Act, 1926 on 13th June, 2003. The plaintiff Nos. 2 and 3 are retired employee of the respondent/defendant No.1

bank. Before the plaintiff union was granted the registration, the cause of the said retired employees used to be espoused by an Association registered under the Societies Registration Act, 1961 by the name of Standard Chartered Grindlays Bank Retired Employees' Welfare Association.

9. The employees Union of the Standard Chartered Bank raised inter alia, disputes under the 10 of the Industrial Disputes Act, 1947 in which Sri H.G. Bhave on 26th September, 1994 passed an award regarding payment of pension by the respondent/defendant No.1 bank to its employees upon their retirement and providing for periodic revision in the quantum of pension admissible on the basis of rise in price index to all the retired employees of the respondent/defendant No.1 bank. Subsequently on 20th November, 1997 a Memorandum of Settlement (MOS) was executed between the respondent/ defendant No.1 bank by its erstwhile management and the employees' association, represented by All India Grindlays Bank Employees Association, under Section 2(p) read with Section 18(1) of the said Act, 1947 and in furtherance of Rule 58 of the Industrial Disputes (Central) Rules, 1957 wherein an interim settlement on pension was arrived at whereby there was an ad hoc interim increase in the quantum of pension to all retired employees irrespective of their date of retirement. The said interim agreement was valid till 31st December, 1998. The said interim agreement also provided that employees of the respondent/defendant No.1 bank who retired on or after 1st October, 1997 would receive a retiring allowance at the rate of ₹1,400/- per month for clerical staff and ? 700/- per month for subordinate staff. This would be in addition to the monthly pension entitlement under the Indian Staff Pension Scheme Rules.

10. A section of the retired employees of the bank felt aggrieved by the said interim agreement dated 20th November, 1997. They filed a writ application before the Bombay High Court being WP No. 165 of 1998 which was disposed of on 30th March, 1998 granting liberty to the employees union to file proper application before the appropriate authority in case they were aggrieved by any final settlement arrived at in respect of their pensionary benefits.

11. On 10th March, 1999 a comprehensive Memorandum of Settlement was arrived at between the erstwhile management of the respondent/defendant No.1 bank and the All Indian Grindlays Bank Employees Association, representing employees of the said Bank. The said settlement provided for increase in quantum of monthly

pension for various categories of retired employees and the future pensioners of the respondent/defendant No.1 bank with effect from 1st April, 1999. It was mutually agreed by the parties that the said settlement would be reviewed.

12. On 24th September, 2001 the respondent/defendant No.1 bank entered into a further MOS with the Employees' Association in pursuance of the Bhave Award, judgment of the Hon'ble Bombay High Court and commitments made by the respondent/defendant No.1 bank in the interim settlement dated 20th November, 1997 and the comprehensive settlement dated 10th March, 1999 with regard to the upper limit of pension in respect of the employees retiring on or after 1st November, 2001. However, the defendant No.1 bank refused to extend such benefits to the employees retired prior to the said date. The plaintiff protected against such discrimination and wanted to raise disputes before the Regional Labour Commissioner (Central) (in short 'RLC') which was opposed by the respondent/defendant No.1 bank as a result whereof conciliation proceeding before the RLC (Central) had failed. The RLC on 21st March, 2003 advised association to approach Labour Court for appropriate relief under Section 33C (2) of the Industrial Disputes Act, 1947 for necessary relief. This has resulted in a writ application being filed by the plaintiff association being WP No.1998 of 2003, in which the association prayed inter alia, for the direction upon RLC (Central) to submit the report to the Central Government under Section 12 of the said Act of 1947 upon failure of conciliation of the Industrial disputes regarding denial of higher pensionery benefits to the employees of the respondent/defendant No.1 bank who retired from service before 1st November, 2001 along with a prayer for further direction upon the Central Government to make an order of reference of the Industrial Disputes under section 10 of the said Act, 1947. The said writ application was disposed of on 16th January, 2007 holding inter alia, that the retired employees cannot raise industrial dispute within the purview of the Industrial Dispute Act, 1947. The association preferred an appeal before the Hon'ble Division Bench of this Court wherein the Co-ordinate Bench for an order dated 8th July, 2009 disposed of the appeal recording that in the event, the appellants namely the plaintiffs herein approached the Civil Court for redressal of their grievance within six weeks from the date of the order they would have the benefit of section 14 of the Limitation Act as they were pursuing their remedy in the writ jurisdiction bona fide. It was on the basis of the said leave

the suit has been filed in which it is contended that ever since the signing of the terms of settlement dated 24th September, 2001 the respondent/defendant No.1 bank has failed/refused/neglected to implement the pension of the Bhave Award in its spirit by not extending the benefit of upward revision in pensionary benefits to the employees of the respondent/defendant No.1 bank who retired prior to 1st November, 2001. The plaint avers the subsequent events that had taken place following the settlement which were also stated in the writ petition. In the plaint, it is stated that the cause of action instituted the suit firstly arose on 30th October, 2002 when the respondent/defendant No.1 bank issued a letter denying the rights of the plaintiff as aforesaid and the same is continuing day to day. By reason of the order of the Hon'ble High Court at Calcutta in the aforesaid writ application and in the appeal against the order passed in the aforesaid writ application, the plaintiffs are entitled to obtain the reliefs under Section 14 of the Limitation Act.

13. The respondent/defendant No.1 bank after the issues were settled and on the date of the peremptory hearing of the suit filed an application for dismissal of the plaint on the ground that the plaintiff has no cause of action.

14. The learned Trial Judge decided the said application in favour of the respondent/defendant No.1 bank.

15. The issues arise for consideration in the appeal is whether the learned Trial Judge in exercises of the power under Order VII Rule 11 (a) could have dismissed the suit. On the ground that the plaintiff does not have any cause of action against the respondent/defendant No.1 bank.

The answer is a clear and simple 'No'.

16. The plaint is required to conform to Order VII, Rule 1 of the Code of Civil Procedure. It is essential that a plaint must disclose a cause of action and a statement to the effect that it is not barred by limitation. The cause of action is essentially a bundle of facts to be stated in the plaint which if proved at the trial would result in a decree being passed in favour of the plaintiff.

17. In Read v. Brown Lord Esher M.R., defined "cause of action" to mean "every fact which it would be necessary for the plaintiff to

prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Fry L. J., agreed and said :

"Everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action."

18. There is a distinction between a plaint not disclosing a cause of action and the plaintiff has no cause of action to sue. A decision as to whether the plaint discloses no cause of action the Court is required to read the plaint in a meaningful manner and take the averments in the plaint to be correct. The plaintiff may have a cause of action which ultimately may not succeed that is not the consideration on which the plaint is to be rejected at the initial stage.

19. To put it in a concise form, the words "cause of action" means the whole bundle of material facts which are necessary for the plaintiff to prove, in order to entitle him to the reliefs claimed in the suit. Order VII Rule 1 requires the plaintiff to incorporate in the plaint the facts constituting the cause of action. The plaintiff is required to plead all material facts upon which his right to relief is based and from which Court can arrive at a conclusion in his favour. Such "cause of action" generally means a situation or state of facts that entitles a party to maintain an action in Court, the material facts imperative for claimant to allege and prove, constitute cause of action that helps plaintiff to obtain decree. The phrase 'does not disclose cause of action' as used in Order VII Rule 11(a) has to be narrowly construed. The distinction between non-existence of a cause of action and nondisclosure of cause of action has been discussed in State of Orissa v. Kolckna Company Ltd.,

20. Under Order VII Rule 11(a), the plaint shall be rejected only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law. The plea that there is no cause of action for the suit is not same as to say the plaint does not disclose any cause of action, which is a ground for the rejection of the plaint. The correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Clause (a) of Order VII Rule 11. (See British Airways v. Art

Works Export Ltd. & another).
(See. Lindsay International Pvt. Ltd. and others v. Laxmi Niwas Mittal and others).

21. In view of the judgment of the learned Single Judge in the writ proceeding and the leave granted by the Hon'ble Division Bench in the appeal preferred against the order of the learned Single Judge the suit was filed. It is elementary that for every wrong there must be a remedy as the Latin Maxim says ubi jus ibi remedium. The plaintiffs cannot be rendered remediless. On a clear and meaningful reading of the plaint there cannot be any doubt that the appellants have semblance of the cause of action against the respondent/defendant No.1 bank. Once it is established that the plaintiff has a cause of action against the defendant and more particularly the defendant No.1 and the plaint disclose a cause of action the Court is not called upon at the stage assessing a demurrer to decide whether the case is likely to fail; the only consideration is whether the plaint disclose the cause of action against such defendant who asserts to the contrary. (See Laxmi Niwas Mittal v. Lindsay International Private Limited and others).

22. In Special Leave Petition arising out of by the order dated 16th January, 2018 passed by the Hon'ble Coordinate Bench the Hon'ble Supreme Court dismissed the Special Leave Petition on 27th April, 2018.

23. In view of the aforesaid settled position of law we are of the opinion that the learned Trial Judge has passed the impugned order on a misconception of law and the said impugned order is liable to be aside.

24. We accordingly set aside the impugned order.

25. In view of our order the suit revives. We request the learned Trial Judge to decide the suit on merits as expeditiously as possible. The trial Court shall decide the suit uninfluenced by any of the observation made by us in this appeal.

26. In view of the above, FMAT 921 of 2013 is disposed of.

There shall be no order as to costs.

AJOY KUMAR MUKHERJEE, J.- I agree ■

Appeal Disposed Of

2022-III-LLJ-424 (Cal)
LNIND 2022 CAL 742
IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
Present :
Hon'ble Mr. Justice Hiranmay Bhattacharyya
W.P.A No. 12749 of 2005
16th June, 2022
Sri Manoranjan Ari ...Petitioner
Versus
Allahabad Bank and Others
.... Respondents

Provident Fund-Interest for delay in Pensionary benefits-Allahabad Bank (Employees') Pension Regulations, 1995, Regulations 3 (9)-Petitioner-employee alleged that he was deprived of enjoying pensioners benefits for specified period and for such belated payment he was entitled to interest on said amount, hence this petition-Whether, Petitioner liable to pay simple interest at rate of 6% on amount of bank's contribution to provident fund including interest accrued thereon in terms of Regulation 3 (9) of Regulations –Held, amount of bank's contribution to provident fund including interest accrued thereon was not paid to employee before period stipulated in Regulation 3 (9) of Regulation-Petitioner while exercising his option authorized trustees of provident fund of bank to transfer entire contribution of bank to provident fund including interest accrued thereon-Such authorization, though made prior to period specified in sub-regulation, was subsisting during said period and was not withdrawn by Petitioner during tenure of his service – Petitioner liable to pay interest @ 6% on bank's contribution to provident fund including interest accrued thereon only for specified period and not for the period as indicated by Bank-Bank was not justified in debiting amount of interest on employee's share of contributory provident fund-Petition allowed.

JUDGMENT

Mr. HIRANMAY BHATTACHARYYA, J.

The petitioner was an employee of the erstwhile Allahabad Bank, which has since merged with the Indian Bank. He retired from

service with effect from May 31.2001. The petitioner claim that in spite of the fact that he submitted his option for pension while he was in service, the respondent/bank did not release the pensionary benefits for which the petitioner was compelled to approach this Court by filing a writ petition being W.P. No. 3071 (W) of 2003. The said writ petition was disposed of by an order dated January 25, 2005 directing the respondent bank to release necessary payment towards the monthly pension with family pension facilities with effect from June 1, 2001 with commutation facility within February 28, 2005. The pension was released in favour of the petitioner only on March 1, 2005.

2. The grievance of the petitioner is that the petitioner was deprived from enjoying the pensionary benefits for the period from June 1, 2001 till February 28, 2005 and for such belated payment he is entitled to interest on the said amount. The further grievance of the petitioner is that the respondent/bank deducted the entire amount of interest amounting to ₹ 1,85,777/- on the balance of contributory provident fund by ignoring the fact that the petitioner is entitled to interest on his own contribution to provident fund, which is 50% of the aforesaid amount. The other grievance of the petitioner is that the commuted value of pension was released only on March 1, 2005, i.e., after about 45 months from the date when the petitioner retired from service for which he is also entitled to interest on account of such belated payment.

3. Mr. Om Narayan Rai, learned advocate for the bank, seriously disputed the claim of the petitioner on account of interest on the employee's share of the provident fund. He placed reliance upon sub-regulation 9 of regulation 3 of the Allahabad Bank (Employees') Pension Regulations, 1995 (" 1995 regulations'" for brevity) and submits that in order to come over to the pension scheme from the contributory provident fund scheme, the optee shall have to refund the amount of bank's contribution to the provident fund including interest accrued thereon together with a further simple interest on such amount. He, thus, submits that the bank is entitled to claim simple interest at the rate of 6% on the amount of bank's contribution to the provident fund including interest accrued thereon. He places on record a calculation made by the bank with regard to the petitioner's entitlement on such account. Such calculation, a copy of which has been supplied to the petitioner, is taken on record.

4. Mr. Rai further submits that immediately after the bank was directed by this Hon'ble Court to release the pensionary benefits, the bank complied with such order and made payments in terms of

the order passed by this Court on an earlier writ petition and therefore, the petitioner is not entitled to any interest as claimed by him. He further submits that a coordinate Bench while disposing of the earlier writ petition did not pass any order directing the bank to pay interest on such amounts.

5. Mr. Chatterjee, learned senior counsel appearing for the petitioner, however, disputes the calculation made by the bank.

6. Heard the learned Advocates for the parties and considered the materials on record.

7. Petitioner exercised option to become a member of the Pension Fund during the tenure of his service. The petitioner was allowed to retire on May 31, 2001 in terms of the scheme of voluntary retirement floated by the bank. Since the bank did not act on the option of the petitioner to come over to the pension scheme, the petitioner approached this court by filing a writ petition being W.P. No. 3071 (W) of 2003. A co-ordinate Bench of this court by an order dated January 25, 2005 after holding that the petitioner is a member of the pension fund in terms of the option filed with the bank directed the respondent/ bank to release the necessary payment towards the monthly pension with family pension facilities to the petitioner with effect from June 1, 200I with commutation facility within February 28, 2005.

8. It is not in dispute that during the pendency of the said writ petition, bank credited an amount of ? 5,40,746.45 on account of employer's and employee's contribution to the contributory provident fund account along with interest till July 25, 2001 to the savings bank account of the petitioner on September 14, 2004. A further amount of ₹ 1,85,877/- on account of interest on the aforesaid amount for the period from July 25,2001 till September 8, 2004 was also credited to the savings bank account of the petitioner on September 14, 2004.

9. However, pursuant to the order dated January 25, 2005 passed in W.P. No. 3071(W) of 2003, the bank debited a sum of ₹ 2,70,373/- being the employer's share on account of the contributory provident fund. A further sum of ₹ 1,85,877/- being the full amount of interest (both employer's and employee's share) was debited from the aforesaid savings bank account of the petitioner. The aforesaid amount was debited from the Savings Bank Account of the petitioner on March 1, 2005.

10. The petitioner claims that the amount of interest on account of

employee's share of contributory provident fund could not have been withdrawn by the bank for the purpose of allowing the petitioner to come over to the pension scheme. The petitioner, thus, claims that he is entitled to refund of such amount and since the petitioner is being deprived of enjoying the said amount with effect from March 1, 2005, the petitioner is also entitled to interest on the said amount till such amount is paid to the petitioner.

11. The issue now arises as to whether the petitioner is liable to pay simple interest at the rate of 6% on the amount of bank's contribution to the provident fund including interest accrued thereon in terms of sub-regulation 9 of regulation 3 of 1995 regulations as contended by Mr. Rai.

12. For the purpose of adjudication of the said issue, sub-regulation 9 of regulation 3 of the 1995 regulations is to be taken into consideration and as such is extracted herein below:-

"(9) Notwithstanding anything contained in sub-regulations (1), (2), (3), (5) and (6) an option exercised before the notified date by an employee or the family of a deceased employee in pursuance of the settlement shall be deemed to be an option for the purpose of this Chapter if such an employee or the family of deceased employee refund within sixty days from the notified date, the amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest in accordance with the provisions of this Chapter and in case employer's contribution of Provident Fund has not been received from Provident Fund Trust, has authorised or authorises within sixty days from the notified date the trustees of the Provident Fund of the Bank to transfer the entire contributions of the Bank to the Provident Fund including interest accrued thereon in accordance with the provisions of this Chapter to the credit of the Fund constituted for this purpose under regulation 5."

13. Mr. Rai submitted that the second part of sub-regulation 9 of regulation 3 cannot be applied in the instant case as the option was exercised by the petitioner prior to the notified date.

14. Chapter (II) deals with application and eligibility to the pension scheme. Regulation 3 classifies the employees to whom the 1995 regulations would apply. Sub-regulation 9 of Regulation 3 starts with a non obstante clause and deals with options exercised before the notified date. It provides that an option exercised before the notified date shall be deemed to be an option for the purpose of

chapter (II) of 1995 regulations if the employee or the family of the deceased employee refunds within the stipulated date, the amount of the banks contribution to the provident fund including interest thereon together with a further simple interest and in case the employer's contribution of provident fund has not been received but the trustees of the provident fund of the bank has been authorised to transfer the entire contribution of the bank to the provident fund including interest accrued thereon to the credit of the pension fund.

15. Therefore, authorization to transfer the amount of Bank's contribution to provident fund including accrued interest can be made even in case of options exercised prior to the notified date.

16. In the instant case the amount of the bank's contribution to the provident fund including interest accrued thereon was not paid to the employee before the period stipulated in sub regulation 9 of regulation 3. Therefore, the question of refunding the said amount could not and did not arise in the instant case. However, it is evident from the records that the petitioner while exercising his option has authorised the trustees of the provident fund of the bank to transfer the entire contribution of the bank to the provident fund including interest accrued thereon. Such authorization, though made prior to the period specified in the sub-regulation, was subsisting during the aforesaid period and was not withdrawn by the petitioner during the tenure of his service. Since the 1995 regulation is beneficial for the employees, the benefit of such regulation cannot be denied merely because of the fact that the authorisation was made prior to the stipulated time period, moreso when the petitioner's entitlement to pension was recognised by this Court by an order passed on an earlier writ petition.

17. Thus, for the reasons as aforesaid this Court is unable to accept the submission of Mr. Rai that the second part of sub-regulation 9 of Regulation 3 cannot be applied in the instant case.

18. The word "refund" used in the first part of the said sub-regulation necessarily means that an amount paid to the optee at an earlier point of time is refunded at a later point of time. Upon reading the said sub-regulation along with other regulations falling within Chapter (II) of 1995 regulations, this court is of the considered view that the bank is entitled to claim simple interest at the rate of 6% on the amount of bank's contribution to provident fund including interest accrued thereon only if such amount on account of contributory provident fund has been paid to the petitioner and the amount of the bank's contribution to the provident fund including

interest accrued thereon is refunded by such optee at a subsequent date.

19. It is not in dispute that after the retirement of the petitioner, the bank did not release the contributory provident fund benefits to the petitioner. It is only on September 14, 2004 that the bank credited the said amount to the savings bank account of the petitioner and debited the amount on account of employer's contribution to the contributory provident fund including interest accrued thereon as well as the total interest for the subsequent period on March 1, 2005. Thus, it can be said that the petitioner was allowed to enjoy the amount on account of provident fund benefits for the period from September 14, 2014 till February 28, 2005 as the said amount was lying in his savings bank account during that period. Therefore, this Court is of the considered view that the petitioner is liable to pay interest @6% on the bank's contribution to the provident fund including interest accrued thereon only for the period from September 14, 2004 till February 28, 2005 and not for the period as indicated by the Bank in the calculation submitted by Mr. Rai, in course of hearing of this matter.

20. In view of the reasons aforesaid, this Court holds that the bank was not justified in debiting the amount of interest on the employee's share of contributory provident fund. Accordingly, this Court holds that the bank should be directed to pay interest on the employee's share of the contributory provident fund for the period from July 25, 2001 till September 8, 2004 together with interest accrued thereon at the highest rate of interest on fixed deposit applicable to ex-staff of the bank prevailing at the relevant point of time till such payment is made to the petitioner in order to compensate the financial loss of the petitioner.

21. It is not in dispute that on account of the inaction on the part of the bank to release pensionary benefits in spite of the fact that the petitioner exercised his option to come over to the pension scheme as far back as in the year 1994, the petitioner had to approach this Hon'ble Court on an earlier occasion and only upon a direction being passed upon the bank to release the pensionary benefits as well as other benefits, the bank released such amount in favour of the petitioner. Since such benefits were released belatedly and the petitioner was deprived from enjoying the benefits, such financial loss is to be compensated by payment of interest. The issue as to

whether the petitioner is entitled to interest on account of arrear pension and commuted value of pension does not appear to have been decided by this Hon'ble Court in the earlier writ petition. Thus, the other objection raised by Mr. Rai that the petitioner is not entitled to interest on account of belated payment of pensionary benefits as well as commuted value of the pension is not accepted by this Court.

22. Thus, for all the above reasons, W.P.A. No. 1 2749 of 2005 is allowed with the following directions:

(i) The respondent / bank shall release the amount on account of interest on the employee's share of provident fund for the period from July 25, 2001 till September 8. 2004 together with interest at the highest rate of interest on fixed deposits applicable to ex-staff of the bank prevailing at the relevant point of time till such payment is made after adjusting on amount on account of interest @ 6% on ? 2,70,373/- for the period from September 14, 2004 till February 28, 2005.

(ii) The bank shall pay interest for delayed of pension for the months of June, 2001 till month of February, 2005 at the highest rate of interest on recurring deposits applicable to ex-staff of the Bank prevailing at the relevant point of time.

(iii) The bank shall pay interest on the commuted value of pension for the period from June, 2001 till February, 2005 at the highest rate of interest on fixed deposits applicable to the ex-staff of the Bank prevailing at the relevant point of time.

(iv) All payments in terms of this order shall be made within 4 weeks from this date.

(v) The bank shall forward a statement showing the break up of the calculation of the amounts paid to the petitioner at the time of making such payment.

23. There shall be, however, no order as to costs.

24. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.■

Petition allowed.

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