(1998) 12 PAT CK 0002

In the Patna High Court

Case No : C.W.J.C. No. 6364 of 1998

Ajay Kumar Srivastava APPELLANT

Vs

The State Bank of India and Others RESPONDENT

Date of Decision : 21-12-1998

Acts Referred:

State Bank of India (Officers Service) Rules, 1992 — Rule 19(3), 20B
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 208

Citation : (1999) 1 PLJR 755

Hon'ble Judges : Radha Mohan Pd., J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Harendra Narain Sinha, for the Appellant; S.K. Sinha, for the Respondent

Judgement

Radha Mohan Pd., J.—With consent of the parties, writ application itself along with I.A. has been heard on merits for final disposal.

2. Petitioner, in this writ petition, has assailed the validity of the order dated 3.11.1997, contained in Annexure-9, whereby and where under his services after retirement with effect from 30th November, 1997 has been extended only for the purpose of continuance and conclusion of the disciplinary proceeding.

3. In short, the relevant facts are that the Petitioner joined the service of the State Bank of India under Calcutta Circle in the year 1958. Later he was promoted in Middle Management Grade II and was posted as Branch Manager in Patna Region. In the year 1979, the Petitioner joined in Agriculture Market Yard, Mohania (Rohtas) under the scheme of the Bank for the development of agriculture produce. According to the Petitioner, in October, 1982, audit was conducted with respect to the said scheme and no irregularity and illegality was found. On 19th January,1983, the Petitioner had a massive heart-attack at Mohania and his condition was critical, which led to his removal to Ranchi, where he was confined to bed due to prolonged illness. During the course of illness the Petitioner was served with the order of suspension dated 12.5.1983, contained in

Annexure-1, by the Respondents. The charge of alleged irregularity were also served upon the Petitioner vide letter dated 16.9.1983, contained in Annexure-2. A criminal case was also registered by the Central Bureau of Investigation (C.B.I.) in which charge sheet against the Petitioner was submitted on 31.12.1984 and after cognizance the said criminal case is pending for trial against him. However, while the Petitioner was to retire on attaining 60 years of age on 30th November, 1997 the impugned order was conveyed to him along with the articles of charges (Annexure-10). It appears that earlier the articles of charges and statement of allegations were served on the Petitioner vide letter No. DGM/P/PS/51 dated 9.9.1997 and vide Annexure-10 addition/amendments to the same were made.

4. In the counter affidavit filed on behalf of the Respondent Bank, it is alleged that the Petitioner did not submit written statement and was merely attempting to delay the matter asking for documents even before submitting his written statement of defence, and that too without specifying the specific documents. It is further stated that the Respondent-Bank did not serve the above charge sheet earlier awaiting early conclusion of the criminal proceeding. According to the counter affidavit, Petitioner as a Branch Manager committed various irregularities and repurchased the returned bills in connivance with the concerned borrowers and the transporter to defraud the Bank, for which he has been charge-sheeted.

5. Learned Counsel appearing for the Petitioner submitted that re-opening of the disciplinary proceeding after a lapse of 15 years is malafide. arbitrary and not permissible in law, in as much as, the Petitioner is not expected to recollect and remember all relevant papers during his service period at Mohania. According to the learned Counsel, in any view of the matter, during the pendency of the criminal case relating to same set of charges, the Respondent Bank was not legally justified in re-opening the disciplinary proceeding after a lapse of 15 years without awaiting for the result of the criminal case. It was further submitted by the learned Counsel for the Petitioner that the extension of service of the Petitioner only for the purpose of continuance and conclusion of the disciplinary proceeding is malafide, just to deprive the Petitioner of his post retrial dues etc., so much so that he is not even being paid subsistence allowance, despite extension of service.

6. As regards the last submission, it has been contended by Mr. Sinha, learned Counsel appearing for the Bank that in view of the Division Bench judgment of this Court in C.W.J.C. No. 225 of 1990 and analogous case, in which on consideration of the scope of the similar provision i.e. Rule 208 of the State Bank of India (Supervising Staff) Service Rules, it was held that the necessity for the Bank to pay emoluments and other benefits to persons brought within the purview of Rule 208 of the Rules does not arise, the Petitioner is not entitled for payment of any subsistence allowance. Further, on merit, it was contended that there is no subsistence in the submission of the learned Counsel appearing for the Petitioner that the disciplinary proceeding was re-opened after a lapse of 15

years. In fact, in the year 1983, the Respondent Bank vide Annexure-2 only called for an explanation from the Petitioner with respect to the irregularities in D.D.(Bills) purchased and no formal departmental proceeding was initiated, awaiting early conclusion of the criminal proceeding instituted by the C.B.I. against the Petitioner. However, since it appeared that there was no chance of conclusion of the criminal proceeding for quite some time and the Petitioner was to superannuate, the Respondent-Bank vide Annexure-10 decided to initiate departmental proceeding by serving articles of charges on 9th September, 1997 vide Annexure-5, and supplementary charges vide Annexure-10 which cannot be said to be illegal or irregular in any manner. According to him, in view of the settled law the disciplinary authority in quite competent to proceed depart mentally as well while the criminal proceeding is pending. As regards the delay alleged with respect-to initiation of the departmental proceeding, he submitted that the matter stands explained and the action of the Respondent-Bank cannot be said to be malafide, arbitrary and/or not permissible in law. It was further submitted that there is no substance in the submission of the learned Counsel appearing for the Petitioner that the Petitioner is not expected to recollect and remember all the relevant papers during his service period at Mohania. In fact, the action was taken long back in the year 1983 itself when the Petitioner was asked to submit his explanation besides that a criminal case was also instituted by the C.B.I. against him.

7. I find substance in the last submission of the learned Counsel for the Bank. In the facts and circumstances of the case, I find it difficult to hold that formal initiation of departmental proceeding after 15 years is malafide, arbitrary and or has in any manner prejudiced the Petitioner. The Bank long back in the year 1983 itself has called for explanation and thereafter a criminal case was also instituted by C.B.I, in which charge sheet against him was submitted on 31.12.1984. Under such circumstances, it is difficult to hold that the Petitioner had not collected the relevant papers for his defence and/or that he will have any difficulty in remembering the relevant papers.

8. I do not find any substance in the submission of the learned Counsel appearing for the Petitioner that during the pendency of the criminal case, the Respondent-Bank was not legally justified in initiating disciplinary proceeding. Learned Counsel for the Petitioner has failed to point out that in what manner the continuance of the disciplinary proceeding will cause prejudice to his defence in the criminal case.

9. In the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , the Supreme Court held that there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated. However, the apex Court further held that there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal or the criminal case, in the facts and circumstances of a particular case, which will be subject to judicial consideration

and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceeding should be interdicted, pending criminal trial. The apex Court in the same case made it clear that it is neither possible nor it is advisable to evolve a hard and fast, straight-jacket formula valid for general application without regard to the particularities of the individual situation.

10. In the case of State of Rajasthan Vs. B.K. Meena and others, , the apex Court held that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The apex Court further held that the standard of proof and mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, should not be a matter of course, but a considered decision. It was also held that even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed. The apex Court on consideration of the fact that if the Respondent of the said case has already disclosed his defence in his elaborate and detailed statement filed on 9.2.93, held that there was no question of his being compelled to disclose his defence in the disciplinary proceedings, which would prejudice him in a criminal case. It has not been shown as to in what manner disclosure of defence in the disciplinary proceeding would prejudice the Petitioner in criminal case.

11. Under such circumstances, I do not find any force in the aforementioned submissions of the learned Counsel for the Petitioner that during the pendency of the criminal case relating to same set of charges, the Respondent-Bank is not legally justified in proceeding with the disciplinary proceedings.

12. As regards the grievance of the Petitioner that he is not being paid subsistence allowance, I find substance in the said submission. It is true that the Division Bench while considering the scope of aforementioned Rule 20B, which is identical to Rule 19(3) of State Bank of India Officers Service Rules, the Division Bench held that the necessity for the Bank to pay emoluments and other benefits to the persons brought within the purview of the said Rule does not arise, but, in my opinion, the question for consideration before the Division Bench was different from that of the claim of the Petitioner relating to payment of subsistence allowance. The claim of the Petitioner before the Division Bench was that once an employee of the Bank is retained in service, he is entitled to receive all emoluments and other benefits thereof because he is precluded from seeking alternative employment during the period, and on concession of the learned Counsel appearing for the Bank that there was no disability attached to the Petitioner and nothing precluded him to seek employment elsewhere during the period of operation of the rule, the Division Bench held that necessity to pay

emoluments does not arise. The Division Bench in the judgment has referred the decision of the apex Court in the case of State of Assam and Others Vs. Padma Ram Borah, . The apex Court while considering the effect of the order retaining the employee in service till the departmental proceedings to be drawn up against him is finalized, firstly held that it placed the Respondent under suspension, and secondly, it retained the Respondent in service till departmental proceedings against him were finalized. Thus, from the said decision of the apex Court, it is clear that in view of the impugned order dated 3.11.1997, the Petitioner will be deemed to have been placed under suspension and his services shall stand extended till the conclusion of the disciplinary proceedings.

13. Rule 19(3) of the Rules reads as follows:

In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank''s service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service, only for the purpose of the continuance and conclusion of such proceedings.

14. From bare perusal of the said Rule also, it is evident that under such circumstances the officer continues to be in service. However, in view of the last sentence that he shall be deemed to be in service only for the purpose of continuance and conclusion of such proceedings, he may not get any benefit/ advantage of the extended tenure, such as Towards post retrial benefit, promotion and full salary for the said period, but, in my opinion, in view of the aforementioned decision of the apex Court that the employee under such circumstances will be placed under suspension, the Officer cannot be deprived of his subsistence allowance for participation in the departmental proceeding. This view also is supported by the fact that the Officer cannot claim payment of post retrial dues, until and unless the proceeding is concluded by passing a final order, and under such circumstances, to deprive him of even subsistence allowance would be unreasonable and against all canons of justice, including the principles of natural justice, inasmuch as, it would be too much to expect from him that he would be able to effectively defend himself without even getting sustenance from the employer.

15. The writ petition is, accordingly, disposed of with the direction to the Respondent-Bank to pay the subsistence allowance to the Petitioner till the conclusion of the disciplinary proceeding.