

(2019) 05 DEL CK 0050

In the Delhi High Court

Case No : Letter Patent Appeal No. 108, 354 Of 2018

Ashok Kumar Sawhney

APPELLANT

Vs

Central Bank Of India & Anr

RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Banking Companies (Acquisition And Transfer Of Undertakings) Act, 1970 — Section 19(2)(c), 19(4)

Central Bank Of India (Employees) Pension Regulations, 1995 — Regulation 33, 33(1), 33(2), 33(3)

Citation : (2019) 260 DLT 518 : (2019) 175 DRJ 398

Hon'ble Judges : Dr. S. Muralidhar, J; I.S. Mehta, J

Bench : Division Bench

Advocate : J.P. Sengh, Umesh Singh, Shashi Pratap Singh, V.P. Singh, Zubin Singh, Sudhir Nandrajog, R.S. Mathur

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. These two appeals raised a similar question of law with a similar set of facts and are accordingly being disposed of by this common judgment.

2. Both appeals involved an interpretation of Regulation 33(1) of the Central Bank of India (Employees) Pension Regulations, 1995 (Pension Regulations) whereunder the Respondent-Central Bank of India (hereafter "the Bank") has sought to reduce the pension payable to each of the Appellants by 1/3rd after they were compulsorily retired from the services of the Bank.

Facts in LPA 108 of 2018

3. As far as LPA 108/2018 is concerned, the facts in brief are that the Appellant Shri Ashok Kumar Sawhney was appointed as clerk by the Bank on 16th May, 1964. He was promoted as Chief Manager in June, 1995. His services were terminated by an order of compulsory retirement dated 15th December, 2003.

Mr. Sawhney made various representations to the Bank seeking release of pension and leave encashment. In December, 2006, 2/3rd of the pension was released to him.

4. Mr. Sawhney states that due to prolonged heart ailment of his wife and her need for constant assistance, he was unable to approach the Court till 2009 when she died. Even thereafter he could not find the means to approach the Court. After the judgment of this Court in *Deepak Sapra v. Punjab National Bank* 2013 SCC OnLine Del 3724, granting the benefit of the leave encashment to those compulsorily retired prior to 2015, on the basis of Resolution dated 5th September, 2017 passed by the Indian Banks Association, he filed WP(C) No. 549/2018 in this Court seeking both restoration of the complete pension and leave encashment.

5. By the impugned order dated 19th January, 2018 the learned Single Judge upheld the reduction of the pension by 1/3rd in view of the Regulation 33 of the Pension Regulations. However, following the decision in *Deepak Sapra (supra)* the learned Single Judge granted the benefit of leave encashment together with the simple interest at 6% p.a. from January, 2015 till the date of payment.

6. Aggrieved by the order of the learned Single Judge upholding the orders dated 6th April, 2017 and 20th November, 2017 of the Bank declining to restore his full pension, Mr. Sawhney has filed LPA No. 108/2018.

Facts in LPA 354 of 2018

7. As far as LPA No. 354/2018 is concerned, the facts are that at the time of his compulsory retirement the Appellant Mr. Mool Chand Sharma was working as Senior Manager in the scale of MM-III. He was awarded the punishment of compulsory retirement by an order dated 24th July, 2014. His appeal against the said order was rejected by the Appellate Authority on 2nd February, 2015. Consequently, his gratuity and leave encashment were forfeited.

8. Mr. Sharma then filed WP(C) No. 2162/2017 before this Court. By an order dated 18th May, 2018 the learned Single Judge upheld the reduction of 1/3rd of pension due to the Appellant by invoking Regulation 33 (1) of the Pension Regulations. Aggrieved by the above order, LPA No. 354/2018 was filed by Mr. Sharma.

9. It must be mentioned here that Mr. Sharma had also assailed the forfeiture of gratuity. However, the learned Single Judge by an order dated 8th March, 2017 relegated Mr. Sharma to the competent/statutory authority to challenge the forfeiture of the gratuity.

Analysis of Regulation 33

10. In both cases, the question whether the Bank was justified in reducing the pension by 1/3rd of its value arises. In both cases the Bank has sought to justify its decision with reference to Regulation 33 of the Pension Regulations which

reads as under:

"33. Compulsory Retirement Pension

(1) An employee compulsorily retired from service as a penalty on or after day of November 1993, in terms of Discipline & Appeal Regulations or settlement by the Authority higher than the Authority competent to impose such Penalty, may be granted pension at a rate not less than two thirds and not more than full pension admissible to him on the date of his compulsory retirement, if otherwise he was entitled to such pension on superannuation on that date.

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these Regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub regulation (1) or as the case may be, under sub regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem."

11. Regulation 33(1) envisages two situations. The first is where an employee is compulsorily retired from service as a penalty on or after November 1993 in terms of the Discipline and Appeal Regulations. This is where, pursuant to a disciplinary inquiry, such a penalty is imposed upon the employee. The second scenario is that such compulsory retirement is brought about through a settlement by an authority "higher than the authority competent to impose such penalty". In such a case, the authority would be one higher than the competent authority. In either scenario, discretion is granted to impose a one-third deduction from the pension of the employee. This is only discretionary. Regulation 33 (1) uses the phrase 'may be granted' and not 'shall be granted' when referring to the applicability of the one-third deduction in the pension of an employee who has been compulsorily retired. In other words, the deduction of one-third of the employee's pension, if he is compulsorily retired, is not automatic.

12. Regulation 33 (2) mandates that where the competent authority passes an order which is "original, appellate, or in exercise of power of review", imposing a one-third cut on the pension then "the Board of Directors" shall be consulted before such an order is passed. The requirement of Regulation 33(2) is relatable to the first scenario where the competent authority imposes the penalty of compulsory retirement on an employee pursuant to a disciplinary inquiry. In other words, the requirement under Regulation 33(2) of mandatory prior consultation with the Board of Directors is attracted only in the first scenario. The logic appears to be that since the second scenario involves an authority higher than the competent authority, the requirement of prior consultation with the Board of Directors is required. The language of Regulation 33 (2) is clear that the requirement is mandatory.

13. This also explains Regulation 33(3) which states that the pension awarded under either of Regulations 33(1) or 33(2) cannot be less than Rs.375/- per month. Regulation 33(3) does, therefore, envisage both situations.

Earlier orders

14. It must be mentioned at this stage that earlier this Court had by separate orders dated 23rd October, 2018 allowed both these appeals with costs of Rs. 20,000/- each after finding that the mandatory consultation with the Board of Directors before withholding the 1/3rd pension was not undertaken.

15. However, in both cases the Bank filed Review Petitions stating that the Board of Directors of the Bank had delegated their powers under Regulation 33 to the General Manager (PRS) who had approved the reduction of the pension by 1/3rd. Since this Resolution of the Board of Directors had earlier not been produced by the Bank when the appeals were heard and since the document had a material bearing on the issue, the Court recalled its order dated 23rd October 2018 and restored each of the appeals to file.

16. This Court has heard Mr. J.P.Sengh, learned senior counsel appearing for Mr. Ashok Sawhney and Mr. Umesh Singh, learned counsel appearing for Mr. Mool Chand Sharma, the Appellants and Mr. Sudhir Nandrajog, learned senior counsel with Mr. R.S.Mathur, learned counsel appearing for the Bank.

Analysis and reasons

17. It requires to be noticed at the outset that what has been produced now before the Court is the minutes of the Board of Directors meeting of the Bank held on 6th February, 2014. It was noticed by the Board that "The Bank is having the large number of employees and to send the matter of each individual case to the Board of Directors, is not practically possible." Consequently, the Board directed its powers to the trustees of the Bank Pension Fund Trust (any two trustees as per Resolution Passed) to take the decision about "payment of pension".

18. However the delegation of the power under Regulation 33 to the two trustees to take a decision is only in relation to those upto the rank of MM-IV. According to the documents placed on record by the Bank, as far as the Senior Manager following the scale of MM-III the decision had to be taken only by the Board of Directors.

19. The Pension Regulations were brought into force in exercise of the powers conferred under Clause 19(2) (f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 ("Act") after consultation with the Reserve Bank of India and with prior approval of the Central Government in accordance with the procedure laid down under Section 19(4) of the Act. Under Section 19(2) (c) of the Act the Board of Directors was empowered to make Regulations with regard to "the delegation of powers and functions of the board of Directors to the General Manager, director, officer or other employee of the Bank." It is

only after consultation with the RBI and prior approval of the Central Government and in accordance with the procedure under Section 19(4) of the Act.

20. Regulation 33(2) which mandates consultation with the Board of Directors can be deviated from only by making another set of regulations for delegation of power following the procedure under Section 19(4) of the Act. Indeed it cannot be done by merely passing the Resolution of the Board of Directors for Regulation of powers. Consequently, even as regards the delegation of powers to the General Manager (PRS) for Employees upto MM-IV which would include Mr. Sawhney, the delegation of powers to the GM (PRS) is not a valid delegation of powers of the Board.

21. This apart, having perused the original records as produced before the Court by the Bank, the Court finds that there were no valid reasons given for reduction of the pension by 1/3rd in the case of Mr. Sawhney. In his case two notes dated 8th January, 2004 and 3rd July, 2006 have been produced to show that the GM (PRS) approved the proposal to reduce pension by 1/3rd. A fresh note appears to have been prepared on 3rd July, 2006 for giving effect to the cut of pension by 1/3rd from 13th October, 2006. Once a fresh note has been prepared the earlier note dated 8th January, 2004 would lose significance.

22. Along with the short affidavit dated 5th April, 2018 filed by the Bank, the said note dated 3rd July, 2006 was enclosed to show that the GM (PRS) had in fact approved the cut by 1/3rd. However, the note produced prepared for his approval reads as under:

"Sir, this is pending since 2004. However, since gratuity is released already. We may agree to the proposal to 2/3rd prov. Pension, pending the outcome of the CBI case."

23. The mere signature on this note by the GM (PRS) cannot be construed as his approval of the proposal. It appears in this very note placed before the ED. This itself shows that there was no application of mind to the proposal. As noticed earlier there was a doubt whether there could be any cut in the pension since there was only a pendency of a CBI case at that stage. It is difficult to infer any grant of sanction of the proposal.

24. In any event, if the delegation of such power to the GM (PRS) is itself not valid in law the consultation with the Board of Directors becomes mandatory even in the case of Mr. Sawhney. As far as Mr. Sharma is concerned, there is no approval of the decision to cut his pension by 1/3rd by the Board of Directors. Therefore, in each of these appeals, the decision to reduce the pension by 1/3rd did require the prior sanction of the Board of Directors which was not obviously forthcoming. Consequently, in neither of the cases the reduction of pension by 1/3rd can be justified.

Conclusion

25. For the aforementioned reasons, the impugned judgment of the learned Single Judge in each of the appeals is hereby set aside. The appeals are allowed. A direction is issued to the Bank to pay to each Appellant on or before 1st July, 2019 the withheld sum of 1/3rd of pension from the date on which it became due failing which the bank will be liable to pay simple interest at 8% on the sum from 1st July, 2019 till the date of payment.

26. The appeals are allowed with costs of Rs.20,000/- in each of the appeals.