

(1995) 11 CAL CK 0043
In the Calcutta High Court
Case No : C.O. No. 8815 (W) of 1992

Banerjee R.N

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 50A

Citation : 100 CWN 300 : (1997) 3 LLJ 1191

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Sankar Mitra, R.M. Majumdar and Somnath Bose, for the Appellant;
Subrata Ray and Ajoy Gupta, for the Respondent

Final Decision : Allowed

Judgement

Gitesh Ranjan Bhattacharjee, J.—In this writ petition the petitioner has challenged the disciplinary proceeding, the enquiry report and the order of dismissal from service passed against him. The petitioner joined the State Bank of India as a Probationary Officer on March 1, 1961. In October, 1986 he was posted at the Antwerp (Belgium) Branch of the State Bank of India as its Chief, that is, as the Chief Manager of the Branch. He was in that branch upto April 1990 and was thereafter repatriated to India. On or about April 17, 1990 a show cause notice was issued to the petitioner alleging that he had committed serious irregularities and also resorted to irregular practices mentioned therein for the purpose of his personal gain and was asked to submit explanation within a specified period. In the said show cause notice dated April 17, 1990 which was served on the petitioner while he was still at Antwerp, it was mentioned that if he needed to refer to the branch records for the purpose of preparing his explanation he might do so before he left Antwerp for India and that the Bank would not later entertain any request from him for visiting Antwerp again for the purpose of scrutinising the branch records. However, the petitioner, after returning to India wrote from Calcutta to the Chief General Manager, State Bank

of India, International Division, Bombay by a letter dated April 30, 1990, Annexure C to the writ petition, requesting him to furnish certain documents mentioned therein for the purpose of enabling him to submit his reply to the show cause notice. The Bank authority in turn, by letter dated May 25, 1990, Annexure-D, pointed out to him that to facilitate the preparation of his reply to the Banks letter dated April 17, 1990 he was permitted to retain the official accommodation at Antwerp beyond the stipulated period of 15 days reckoned from the date of relief but the petitioner declined to avail himself of that opportunity to complete the examination of the documents at the Antwerp centre. However, the petitioner was asked to visit the Bombay Office after giving prior notice for the purpose of scrutinising the relevant documents. In his letter dated June 6, 1990, Annexure-E addressed to the Chief General Manager, S.B.I., International Division, Bombay, the petitioner explained the reason why he could not avail opportunity of consulting records at the Antwerp office before leaving Antwerp. He also expressed his inability to visit the Bombay Office because of his ill health and requested the Chief General Manager to furnish him copies of the concerned documents so that he might submit his reply to the show cause notice dated April 17, 1990. Thereafter by their letter dated June 27, 1990 the Bombay Office of the Bank forwarded photostat copies of documents to the petitioner asking him to reply latest by July 15, 1990. By a letter dated July 12, 1990, Annexure-G, the petitioner informed the Chief General Manager that certain documents on which the petitioner would rely had not been supplied and as such he would not be in a position to give effective reply in absence of those documents. Thereafter further correspondence followed between the petitioner and the Bombay Office of the Bank regarding documents. The Bank authorities objected to supply certain documents on the ground that those documents were not necessary for the purpose of the reply of the petitioner.

2. Ultimately the petitioner was placed under suspension by an order dated September 4, 1990, Annexure-K, passed in terms of Rule 50-A (a) of the State Bank of India (Supervising Staff) Service Rules. This suspension order was however challenged by the petitioner in a writ petition which was disposed of by Shyamal Kr. Sen, J., by order dated September 14, 1990, Annexure-L. In that order the learned Judge took notice of the fact that the petitioner was on leave from the month of April 1990 on the ground that he was suffering from Leukemia and felt that since the petitioner was not attending his official duties and also would not go out of his residence except on medical advice it was not necessary to use the word "suspension" but he would be paid at the rate of subsistence allowance and the respondent authorities were entitled to suspend the petitioner in all other respects. The learned Judge also passed an order to the effect that the word "suspension" used in the impugned order would not be given effect to but in all other respects the impugned order would remain effective. It was also made clear by the learned Judge that the respondents would be at liberty to initiate all proceedings by issuing charge sheet and by taking disciplinary proceeding in accordance with law and observed that in the event any

disciplinary proceeding was initiated the same should be concluded within six months from the date of such initiation after affording the writ petitioner opportunity to defend. The petitioner was also directed to co-operate with the respondents for expeditious conclusion of the proceeding. It was further directed that if necessary the evidence of the petitioner might be taken at his residence. By letters dated September 10, 1990 and October 9, 1990 the petitioner replied to the show cause notice dated April 17, 1990, vide Annexure-M.

3. Charge-sheet was however issued thereafter against the petitioner on March 26, 1991, vide Annexure-C. The petitioner makes a grievance that this charge-sheet does not contain any reference to the replies earlier given by the petitioner in respect of the show cause notice served on him. Well, that does not, I must say, make the charge-sheet or the disciplinary proceeding bad. The petitioner gave a reply to the said charge-sheet by his letter dated April 12, 1990. The petitioner also moved a writ petition against the purported disciplinary action taken against him and the said writ petition was disposed of by Kalyanmoy Ganguly, J., by order dated May 28, 1991, vide Annexure-Q. In disposing of the writ petition the learned Judge gave certain directions as quoted below:--

"The enquiry proceeding is to commence within a fortnight from the date of communication of this order. The enquiry is to be conducted continuously without allowing any adjournment except under compelling circumstances. The enquiry is to be concluded within six months from the date of commencement thereof as indicated hereinbefore. The petitioner is directed to co-operate in the matter of the enquiry. If the petitioner does not so co-operate, the authority concerned will be entitled to proceed ex parte. The report of the enquiry is to be submitted to the appropriate authority within a fortnight from the date of completion of the enquiry. The copy of the enquiry is to be supplied to the petitioner within a week from the date of receipt thereof. The petitioner will be at liberty to make any comments on the report of the enquiry, if any, within a week from the date of receipt thereof. The final order is to be passed within 10 days from the date of receipt of the representation, if any, regarding the enquiry report. The respondents will not give effect to the final order passed in the enquiry for a period of a fortnight from the date of the communication thereof. In default of compliance of any of the directions given herein above and on the expiry of the period mentioned above, the enquiry proceeding shall be deemed to have been abandoned by the employer. As the respondents could not file any affidavit-in-opposition, the statement and the allegations made in the writ petition are not admitted. I have not decided the points taken in the writ petition on merits. Liberty to mention."

4. The preliminary hearing in the departmental enquiry was fixed to be held on June 8, 1991. It may be mentioned here that the Respondent No. 8 Ms. Vijai Lakshmi Sharma, the Commissioner for Departmental Enquiries, Central Vigilance, Government of India was appointed the Enquiry Officer (E.G.). The Charged Officer (C.O.), that is, the present writ petitioner also engaged one Sri

S.K. Chowdhury as Defence Assistant (D.A.) to assist him in the departmental proceeding. At the preliminary hearing the Presenting Officer (P.O.) brought the list of documents and witnesses upon which the prosecution relied to substantiate the charges against the C.O. and also brought all the listed documents for inspection by the C.O. and his D.A. The R.O. directed the P.O. to hand over duly authenticated photocopies of the documents relied upon by the P.O. on June 10, 1991 and time was granted to the C.O. till June 24, 1991 to submit his list of additional documents and witnesses required to defence. The E.G. enquiry at Antwerp, by a letter dated September 12, 1991, Annexure- A, addressed to the Respondent No. 8 the petitioner inter alia mentioned that his representation to the Chairman of the Bank for allowing T.A./D.A. to the witnesses had not evoked any response so far, in his letter dated September 16, 1991, Annexure C, the petitioner inter alia asked the E.O. to allow reasonable and adequate time for the defence witnesses to present themselves and depose. By a telegram dated September 20, 1991 the Respondent No. 8 informed the petitioner that considering his request the regular hearing fixed on September 25, 1991 had been postponed to October 29, 1991. By a subsequent telegram dated September 20, 1991 the Respondent No. 8 informed the petitioner that the regular hearing had been postponed to October 28, 1991 and the Presenting Officer was also instructed to afford inspection of the remaining documents, and claiming that sufficient notice for witnesses had thus been provided. By a letter dated September 25, 1991, the Chief Vigilance Officer informed the petitioner (received on October 7, 1991) that the Bank would provide T.A/D.A. for the Bank staff to be called as defence witnesses, whether coming from India or abroad according to their entitlement as per the service rules but no T.A/D.A. would be paid by the Bank for any witness who might be called as a defence witness from abroad if he was not a member of the Bank staff. It may be mentioned here that the C.O. wanted to examine one non-staff witness who was to come from abroad. By a letter dated October 9, 1991 addressed to the Chairman of the Bank the petitioner requested for allowing T. A./ D. A. for the sole non-staff witness with alternative suggestions. It is the petitioner's case that on October 14, 1991 the petitioner received a telephone call from the Respondent No. 8 by which he was informed that the summons were being issued by respondent No. 8 by refixing the enquiry on November 14, 1991. On October 25, 1991 the Chief Vigilance Officer of the Bank however informed the petitioner (vide Annexure-N) that the non-official witness cited by the C.O. who was to come from abroad would also be given T.A./D.A. by the Bank but the expenses would have to be kept to the barest minimum. The regular hearing accordingly started again on November 14, 1991 and continued in a spell upto November 16, 1991 during which two defence witnesses appeared and were examined. It is the case of the respondents that the other defence witnesses to whom summons were issued declined to come, while it is broadly the case of the petitioner that the other defence witnesses could not come because the date did not suit them or the time was short. The enquiry however was then resumed in the afternoon of November 19, 1991. It is the petitioner's case that on November 20, 1991 the petitioner

could not attend the enquiry on the ground that he became unwell and was advised bed rest for three days by his doctor. It may be mentioned here that the petitioner has been suffering from Leukaemia (Blood Cancer) for which he was not in a position to attend his normal duties. As the petitioner could not attend the enquiry on November 20, 1991 the E.O. and others went to the residence of the petitioner on that very day. The petitioner however expressed inability to depose on that day even at his residence on health ground. It may be mentioned that he had already deposed in part earlier. In the order sheet of the E.O. dated November 20, 1991 it had been recorded inter alia that according to the petitioner the doctor had advised him complete bed rest for three days and he undertook to inform the E.O. through the P.O. in the forenoon of Friday (November 22, 1991) at Delhi so that the E.O. could come by the evening flight and resume the enquiry proceeding on the morning of Saturday (November 23, 1991). In the said order the E.O. further recorded that adjournment was granted on the request of the C.O. till Saturday, November 23, 1991 by which date the enquiry was expected to resume. It was also recorded in the said order by the E.O. that the enquiry was to be completed within six months from the date of commencement thereof, that is, by December 7, 1991 and accordingly the written brief of the C.O. must be submitted by December 7, 1991. In the last paragraph of the said order the E.O. recorded that as undertaken by the C.O. information must be passed on to the E.O. in the forenoon of Friday (November 22, 1991) to resume the proceeding on November 23, 1991, failing which the regular hearing would be resumed on November 25, 1991 (vide, Annexure-Q). On November 22, 1991 the petitioner informed the Respondent No. 8 at Delhi through the P.O. in Calcutta that he would be able to say at the earliest by the afternoon on Monday, November 25, 1991 as to when he would be able to resume because he had been asked by his doctor on November 22, 1991 to arrange for complete blood test and consult a Hematologist which could be done at the earliest by Monday afternoon, vide Annexure-R. In paragraph 62 of the writ petition it is stated that on November 25, 1991 the petitioner informed the Respondent No. 8 at Delhi through P.O. at Calcutta that the enquiry could be resumed next day, that is, on November 26, 1991 however the Enquiry Officer passed an order at Delhi (vide Annexure-S) concluding the regular hearing on ex parte basis and deeming that the deposition of the C.O. had been closed. The P.O. was given time till November 27, 1991 to submit his brief and also serve a copy of his brief upon the C.O. on that date and the C.O. was allowed time to submit his brief latest by December 7, 1991. The petitioner is highly aggrieved by the ex parte decision of the E.O while sitting at Delhi to close the unfinished evidence of the C.O. on ex parte basis. The P.O. however submitted a copy of a written brief to the petitioner by November 28, 1991 The C.O. by a letter dated December 12, 1991 asked the Managing Director to treat the enquiry as abandoned in view of the order of Kalyanmoy Ganguly, J., vide Annexure-T. By a letter dated December 23, 1991 addressed by the Managing Director to the petitioner a copy of the enquiry report submitted by the E.O. was forwarded to the petitioner asking him to submit his comments, if any, in that regard within a

week from the date of receipt of the report. By a letter dated January 6, 1992 the petitioner furnished his comments on the enquiry report to the Managing Director of the Bank, vide Annexure-V. On January 16, 1992 the Managing Director as the disciplinary authority submitted a memorandum to the Executive Council recommending dismissal of the petitioner from service in view of the charges against him and also submitted a supplementary memorandum dated January 20, 1992 after receiving and considering the reply of the writ petitioner to the enquiry report, and on consideration of both, the Executive Council agreed with the disciplinary authority and ordered the C.O. (the petitioner) to be dismissed from service. Thereafter the petitioner was served with the order of dismissal dated January 21, 1992 along with the memorandums dated January 16, 1991 and January 20, 1992. Subsequently the petitioner filed the present writ petition.

5. As we have seen, the hearing was closed by the E.O. on November 25, 1991 on ex parte basis while the examination-in-chief of the C.O. was yet to be concluded. The fact that the hearing was closed before the evidence of the C.O. could be concluded is itself disturbingly unfortunate. The E.O. justified the ex parte conclusion of the hearing, even before the deposition of the C.O. was completed, on the ground that the C.O. was not properly co-operating with the enquiry which was required to be concluded within a particular time frame as fixed by Kalyanmoy Ganguly, J. But the question is whether really the C.O. was responsible for the ex parte conclusion of the hearing on November 25, 1991. As we have seen, the petitioner is a patient of blood cancer (Leucemia) and was under treatment. The examination of the defence witnesses started on November 14, 1991 and some defence witnesses were examined. On November 20, 1991 the C.O. could not attend the venue of the enquiry for his further examination on the ground that he was medically advised to take rest for at least three days. The Enquiry Officer accompanied by other officers then went to the house of the C.O. on November 20, 1991 but the C.O. expressed inability to get himself further examined on that day even at his residence on health ground. He was asked by the E.O., as it appears from the order sheet dated November 20, 1991, to inform the E.O., at Delhi through the P.O. at Calcutta by November 22, 1991 so that the enquiry could be resumed at Calcutta on November 23, 1991. The order sheet of the E.O. recorded on November 20, 1991 also shows that if it did not become possible to resume the enquiry on November 23, 1991 then it would be resumed on November 25, 1991. On November 22, 1991 the petitioner (C.O.) informed the E.O. at Delhi through the P.O. at Calcutta that he had been asked by his doctor for complete blood test and also to consult a Hematologist and therefore he would be able to say at the earliest by November 25, 1991 as to when he would be able to resume his evidence as he had to consult a Hematologist for Leukaemia. It is his case in para 62 of the writ petition that he also informed the E.O. at Delhi through the P.O. at Calcutta on November 25, 1991 that the enquiry might be resumed on the next day, that is, on November 26, 1991. There is no specific denial to this averment of the petitioner that he

informed on November 25, 1991 that the enquiry might be resumed on November 26, 1991. The Enquiry Officer without coming to Calcutta closed the hearing on ex parte basis at Delhi. In view of the earlier order passed by E.O. on November 20, 1991 the E.O. should have been at Calcutta, which is the venue of enquiry, on November 25, 1991, if the hearing was to be peremptorily closed on that day, particularly when the C.O. informed that in view of his illness and then medical advice he would be in a position to say by November 25, 1991 as to when he would be able to depose. It is indeed unfortunate that the hearing was closed on November 25, 1991 on ex parte basis, the E.O. staying at Delhi although on November 25, 1991 the petitioner informed that he would be in a position to depose on November 26, 1991. It needs no emphasis that by closing the hearing even when the C.O. had not yet completed his evidence, the C.O. was put to deprivation of proper opportunity to place the defence. The E.O. had to take this step to close the hearing on November 25, because of the time limit fixed by Kalyanmoy Ganguly, J., for completing the enquiry. It has however been missed by the E.O. that the learned Judge in the concerned order granted liberty to mention which obviously meant that if the enquiry could not be duly completed within the time frame fixed by the learned Judge, in that event the Court could be move for extension of time. In view of the fact that the petitioner was suffering from a dreaded disease like Leukaemia and was under medical treatment and advice, one is required to be rather cautious and circumspect before holding that he was not co-operating with the enquiry simply because he was unable to attend the enquiry for a few days for health reason on medical advice. In all fairness, when the E.O. found that the C.O. was not being able to attend the enquiry at its last phase in a tight schedule for reason of health and treatment in respect of a serious disease like Leukaemia, he should have asked the parties to get the matter mentioned before the Court for which liberty had been given so that the time limit for completion of the enquiry could be extended for proper conclusion of the same. Blaming the petitioner for non-co-operation, as has been done by the E.O., does not seem to be justified. It may be mentioned here in this connection that the examination of the defence witnesses including the petitioner could have been undertaken much earlier by fixing appropriate dates for the purpose if the matter would not have been unnecessarily dragged over the question as to whether the Bank would pay T.A./D.A. for the defence witnesses. It is the case of the respondents that the E.O. granted time for examination of defence witnesses so that the petitioner could bring his witnesses for the purpose of defence. Well, in my opinion for this the petitioner cannot be made responsible. As we have seen, initially the Bank took a stand that they would not allow any T.A./D.A. for the defence witnesses. The petitioner however pressed the point with the Bank authorities and ultimately the Bank authorities conceded after quite a lapse of time that they would allow T.A./D.A. only for official witnesses but would not allow any TA / DA for non-official witnesses for the defence. For valid reasons the petitioner had to press the matter further and ultimately the Bank authorities conceded that they would pay the TA/D.A. for the non-official witness also. It is needless that in this process a

long time had elapsed. If the Bank at the appropriate stage would have agreed to allow T.A./D.A. for the defence witnesses which they should have done, in that event there would have been no occasion for the last minute rush of the E.O. to hastily conclude the hearing, without allowing the defence evidence to be completed, so that the enquiry could be somehow concluded within the time frame fixed by the Court. The responsibility in the matter therefore cannot at all be attributed to the petitioner. As I have already observed, even then the E.O. should have advised the parties at the last stage to obtain extension of time from the Court beyond the initial time limit fixed by the Court, for proper completion of the enquiry. Unfortunately, instead of doing that the E.O. adhered to the time frame initially fixed, at the cost of full and due opportunity for the petitioner to complete his defence. Since the petitioner did not get full opportunity of hearing to complete his defence there is no gainsaying that he has been undoubtedly prejudiced in his defence by reason of the premature conclusion of the enquiry by the E.G. for reasons for which the petitioner could not be made responsible. For this reason alone the enquiry report and the order of dismissal are found liable to be quashed, thereby dispensing with the necessity of considering the other questions regarding denial of natural justice as have been raised by the petitioner.

6. Here I would like to mention that in support of his proposition that the principles of natural justice are not embodied rules and the question whether natural justice has been violated in a case depends upon the particular facts and circumstances obtaining in the case the learned Advocate for the respondents referred to certain decisions of the Supreme Court, namely, Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Swadeshi Cotton Mills Vs. Union of India (UOI), , The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, , K.L. Tripathi Vs. State Bank of India and Others, and Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), There is no doubt that the said proposition is well settled. Having regard to the facts and circumstances of our present case I however find, as noted above, that by reason of closing of the hearing, even before the C.O. could complete his evidence, the C.O. was deprived of the opportunity to properly place his defence for which the C.O. cannot be responsible and the prejudice caused to the C.O. in the matter of his defence, in the circumstances, violates the principles of natural justice and for that reason alone the enquiry report and the subsequent order of dismissal on the basis of the same cannot be sustained. It may be mentioned here that the learned Advocate for the petitioner referred to certain decisions which I consider redundant to discuss in view of my finding recorded above.

7. I however could have asked the E.O. to carry on the enquiry and complete the same in accordance with law within a further time frame, but I refrain from doing that as I find that the entire departmental proceeding itself is bad for the reason that it was initiated subsequent to the retirement of the petitioner which is not

permissible under law for reasons to be discussed hereinafter.

8. As we have seen, the petitioner's date of birth is February 1, 1937. Paragraph 19 of the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 (for short, DTCS Order) relates to age of retirement. The relevant portions of the said paragraph 19 are reproduced below :

"19(1)

An officer shall retire from the service of the Bank on attaining the age of 58 years or upon the completion of 30 years" service or 30 years" pensionable service if he is a member of the pension fund whichever occurs first.

Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of 58 years or has completed 30 years" service or 30 years" pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of period of leave due at that time will not count for purpose of pension.

Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years" service or 25 years" pensionable service as the case may be, by giving him three months" notice in writing or pay in lieu thereof.

Provided further that an officer who has completed 25 years" service or 25 years" pensionable service, as the case may be, may be permitted by the Executive Committee to retire from the Bank's service, subject to his giving three months" notice in writing or pay in lieu unless this requirement is wholly or partly waived.

(2)

(3) In case disciplinary proceedings under the relevant rules of service has 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 this order, 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.

Explanation : An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement".

9. The petitioner completed 30 years of service on February 28, 1991 and 58 years of age in January 31, 1995. Therefore he completed 30 years of service earlier to attainment of the age of 58 years. Therefore under paragraph 19(1) of the DTCS Order his date of retirement falls on February 28, 1991 on which date he completes 30 years of service. Charge-sheet of the petitioner was however

issued on March 26, 1991, that is, after the date of his retirement in terms of paragraph 19(1) DTCS Order. It is needless to mention that the issuance of the charge-sheet marks the initiation of the disciplinary proceeding against the petitioner. Since in this case the charge-sheet was issued subsequent of the date of retirement of the petitioner, the disciplinary proceeding itself, as started on the basis of the said charge-sheet, is not tenable nor is Rule 19(3) DTCS Order, as quoted above, is applicable in the case for extension of service of the petitioner after retirement even for the limited purpose of continuing and concluding the departmental proceeding. To obviate this situation the respondents relied upon a letter dated March 6, 1987, Annexure-G to the affidavit-in-opposition, by which the petitioner's service was purportedly extended upto January 31, 1992 when the petitioner would attain 55 years of age. It is submitted on behalf of the respondents that since the petitioner's service was thus extended by that letter dated March 6, 1987 upto January 31, 1992 and since the charge-sheet was issued against the petitioner within that extended period of service there is no scope for contending that the disciplinary proceeding was initiated after the retirement of the petitioner.

10. In this connection however it will have to be examined as to whether the purported extension of service of the petitioner in March 1987 upto January 31, 1992 was legally effective. The petitioner completed 25 years of service on February 28, 1986 and 50 years of age on January 31, 1987. In March 1987 there was therefore no question of considering extension of service of the petitioner, because his retirement by reason of completion of 30 years of service, would have been due only on February 28, 1991, that is, about four years later. It is submitted by the learned Advocate for the respondents that since the petitioner completed 30 years of service on January 31, 1987 his case was considered immediately thereafter under the second proviso to the said paragraph 19(1) as to whether he should be retired under the said proviso, well, this argument does not help the respondents in this context. Even if it is accepted for the sake of argument that on completion of 50 years of age the petitioner's case was taken up for consideration as to whether he should be retired under the second proviso to paragraph 19(1), there could have been no question of extension of his service at that stage. If on consideration of the case of an employee under the second proviso to paragraph 19(1) it is found that the employee is not required to be retired at that stage the matter ends there, and there is no question of extension of service at that stage, because unless retired under the said second proviso he would automatically continue to be in service till his retirement in the normal course under the substantive part of the said paragraph 19(1). The exercise regarding the extension of the service of the petitioner in, March 1987 cannot also be treated as a composite exercise of considering whether he should be prematurely retired under the second proviso to para 19(1) at that stage and whether he should be allowed extension of service beyond the normal date of superannuation under the First proviso to paragraph 19(1), the question whether the service of an employee should be

extended beyond the normal date of his retirement cannot be surely taken up for consideration four years before the advent of that date. The question whether the service of an employee should be extended beyond the normal date of superannuation under the first proviso to paragraph 19(1) has to be necessarily considered at or about the time sufficiently proximate to the date of superannuation so that the question of desirability of or his suitability for such extension can be considered inter alia on the basis of his performance and health condition during the last 3 or 4 years immediately preceding the date of superannuation. Such a consideration, for obvious reason, cannot be reasonably embarked upon in the interest of the Bank long four years before the advent of the normal date of superannuation of the concerned employee. Therefore any consideration or exercise four years before the normal date of retirement of an employee cannot by any stretch of imagination, far less any logic, be treated as an exercise for consideration of extension of service of an employee beyond the normal date of superannuation which would come as long a period as four years later. Any exercise regarding the extension of service of the petitioner under the first proviso to paragraph 19(1) in March 1987 cannot therefore be construed as a lawful exercise of the power of extension of service after the normal date of superannuation of the petitioner and consequently the purported extension of service of the petitioner in March 1987 is wholly misconceived, ineffective and is of no legal or administrative consequence. This purported extension of service extensively granted in March 1987 to be effective beyond February 1991, being inherently devoid of any legal consequence, cannot be utilised by the respondents for the purpose of legalising the initiation of the departmental proceeding after the normal date of retirement of the petitioner.

11. It is submitted by the learned Advocate for the petitioner that in view of the fact that the petitioner filed an earlier writ petition which was disposed of by Kalyanmoy Ganguly, J., the question relating to the date of retirement of the petitioner cannot be canvassed in this writ petition. In the written argument submitted on behalf of the respondents also it has been contended that in spite of the fact that the charge-sheet was issued after completion of 30 years of service the Court (Kalyanmoy Ganguly, J.), directed the disciplinary proceeding to be held against the petitioner and that being so the petitioner now cannot contend that he has been charge-sheeted after superannuation. This argument, I must say, is not at all convincing. In the order dated November 20, 1991 Kalyanmoy Ganguly, J., while disposing of the writ petition, did not decide anything on merit and this has been also recorded in the order. The learned Judge kept every question open and only fixed an elaborate time frame for completing the enquiry. The learned Judge even directed that the order that would be passed in the disciplinary proceeding would not be given effect to for a certain period which was done precisely for giving the petitioner an opportunity to challenge the order before it is given effect to. That being so when nothing was decided on merit in the earlier writ petition and everything was rather left open it cannot be held that the petitioner is debarred from challenging the charge-sheet or disciplinary

proceeding in this writ petition on the ground that the charge-sheet was issued after the date of his retirement, more so when this question is a pure question of law. On consideration of the relevant provisions of the DTCS Order, 1979 I hold that the purported extension of service of the petitioner in March 1987, vide Annexure-G to the affidavit-in-opposition, was premature and legally ineffective for reasons already discussed by me and consequently the disciplinary proceeding initiated against the petitioner by issuing charge-sheet on March 26, 1991 when the petitioner already stood superannuated on February 28, 1991 under paragraph 19(1) DTCS Order is illegal.

12. The Bank authorities by their letter dated January 20, 1992, Annexure-X to the writ petition informed the petitioner that his service was not extended after January 31, 1992 but he was continued in service for the limited purpose of conclusion of the disciplinary proceedings in terms of paragraph 19(1) of the DTCS Order. It is needless to say that this purported extension for the limited purpose of conclusion of the disciplinary proceeding is of no legal consequence whatsoever when it is found that the issuance of the charge- sheet and initiation of disciplinary proceeding on the basis of the charge-sheet are vitiated by reason of the fact that the petitioner had, in the eye of law, already retired from service much earlier on February 28, 1991.

13. At the time of argument the learned Advocate for the petitioner however submitted that inspite of his reaching the age of superannuation on February 28, 1991 the petitioner was entitled to be considered for extension of service under the first proviso to paragraph 19(1) in view of the Single Bench decision of this Court in Sankar Prasad Chattakhandi and Others Vs. State Bank of India and Others, On the other hand it is submitted by the learned Advocate for the respondents that the said Single Bench decision of this Court stood impliedly overruled by the subsequent decision of the Supreme Court in State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal, I however need not enter into the question in this case as to whether the said Single Bench decision stands impliedly overruled by the said decision of the Supreme Court inasmuch as the petitioner, in my opinion, cannot at the stage of argument in 1955 take a belated plea that he is entitled to consideration for extension of service beyond February 28, 1991. This right of consideration, if at all, had accrued to him in early 1991. He did not choose to claim his right to consideration for extension of service during this long period for more than four years and rather claimed his retiral benefits in the prayer portion of this writ petition treating that he had retired on February 28, 1991. It is a settled principle of law that delay in pressing a claim, unless properly explained, is fatal in the matter of invoking the writ jurisdiction of the Court. In the present case the right to consideration for extension of service has been claimed only at the stage of argument more than four years after the right had accrued to him, if at all. No explanation whatsoever has been offered as to why there is such a delay in pressing this claim for consideration of extension and that too, after claiming in the writ petition itself the retiral benefits that have accrued to him by virtue of his retirement on February 28, 1991.

14. The reason as to why the petitioner did not raise the question of considering his case for extension of service at the appropriate time is perhaps not far to seek. The petitioner has been suffering from Leucemia and as result of ill health he had to go on leave. In such a situation any consideration for his extension of service, perhaps he could reasonably, visualise, would not have possibly yielded any favourable result for him and that is why he rather preferred to maintain silence in the matter for more than four years since his retirement and wanted to take a chance now at the stage of argument. This belated claim for consideration of extension of service cannot obviously be entertained at this stage. In the circumstances I dispose of the writ petition in the following manner. The departmental proceeding including the charge-sheet, the enquiry report and the impugned order of dismissal of the petitioner is hereby quashed the respondents are directed to treat the petitioner to have retired from service on February 28, 1991 and give him all consequential retrial benefits as may be admissible under law within three months from this date. Any subsistence allowance which might have been paid to the petitioner for the period subsequent to February 28, 1991 shall be adjusted against the retrial benefits admissible to the petitioner. There will be no order as to costs.