

(2023) 05 DEL CK 0281

In the Delhi High Court

Case No : Civil Writ Petition No. 10457 Of 2019

D. B. Madan

APPELLANT

Vs

Punjab National Bank Through Its Chief Manager

RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Punjab National Bank Officer Employees? (Discipline and Appeal) Regulations, 1977 — Regulation 15, 15(1), 15(3), 15(3)(a), 15(3)(b)
Corporation Bank Officer Employees? (Discipline & Appeal) Regulations, 1982 — Regulation 15(1), 15(2)

Citation : (2023) 05 DEL CK 0281

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Siddharth Bawa, Mohit Sharma, Rajesh Kumar Gautam, Anant Gautam, Nipun Sharma, Sachin Singh, Vidur Ahluwalia, Sumit Sharma

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

1. By this writ petition, Petitioner seeks quashing of the order dated 21.01.2019, whereby his representation for treating the suspension period as period in service and payment of balance salary has been rejected. A writ of certiorari is also sought for quashing the order dated 11.02.2019, by which Petitioner was informed that the period of suspension from 17.12.1994 to 13.12.2000 would be treated as period of service without break and counted towards qualifying service for calculation of terminal dues but from the date of acquittal of the Petitioner in the criminal case i.e. 25.05.2018. Writ of Mandamus is sought directing the Respondent to release to the Petitioner the difference between full salary and subsistence allowance with interest for the suspension period and also to treat the length of service as 31 years instead of 25 years for computation of pension.

2. The factual score that emerges from the writ petition is that Petitioner joined the Respondent/Punjab National Bank as an Officer in September, 1976. On 31.08.1992, Central Bureau of Investigation ('CBI') registered an FIR against few officials of the Bank including the Petitioner for alleged irregularities in some loan accounts of M/s Pankaj Finance & Leasing Ltd. (PFLL). In September, 1993, New Bank of India was merged with Respondent/Punjab National Bank and in October, 1994, sanction was given for prosecution of some employees of the Bank, including the Petitioner and a charge sheet was issued thereafter.

3. On 17.12.1994, Petitioner was placed under suspension, which was revoked on 13.12.2000, without prejudice to the criminal proceedings/disciplinary action pending/contemplated against him with a further direction in the order to post him at a non-sensitive post on the administrative side. One month before his superannuation, a show-cause notice was served on the Petitioner on 30.05.2007 for certain irregularities to which a reply was sent by the Petitioner on 12.06.2007. On 28.06.2007, Petitioner was informed that in the wake of contemplated disciplinary proceedings, his superannuation benefits shall be withheld. Petitioner superannuated on 30.06.2007.

4. Challenging the show-cause notice and the order dated 28.06.2007, Petitioner filed a writ petition in this Court being W.P.(C) 1290/2008, which was disposed of on 15.09.2008 with a direction to the Respondent to take a decision on the show-cause notice within four weeks. Instead of deciding the show-cause notice Respondent served a charge sheet on the Petitioner on 06.10.2008.

5. On 29.11.2009, Respondent gave a second option for pension to the Petitioner on deposit of Bank's contribution of Provident Fund and Petitioner opted for pension and deposited the desired amount. Consequent thereto, Respondent started paying pension to the Petitioner w.e.f. 29.11.2009 but without taking into consideration the period of 6 years during which Petitioner was placed under suspension and hence the total period computed for pension was taken as 25 years.

6. In the meantime, Petitioner challenged the charge sheet by filing W.P.(C) 7481/2008 before this Court, which was allowed vide judgement dated 29.10.2013, quashing the charge sheet as being without jurisdiction, with a further direction that Petitioner be paid the retirement benefits along with interest @ 6% p.a. w.e.f. 01.07.2007. Admittedly, this judgement was never assailed by the Respondent and was implemented by paying the retirement dues along with interest.

7. Significantly, vide judgement dated 25.05.2018, the CBI Court acquitted the Petitioner of all criminal charges while some of the co-accused were convicted. Armed with the judgement, Petitioner sent a representation dated 04.06.2018 to the Respondent requesting for treating the suspension period from 17.12.1994 to 13.12.2000 as spent on duty and payment of the difference between the salary and subsistence allowance already paid, as also to treat the length of service as

31 years for computation of pension, in accordance with Regulation 15 of the Punjab National Bank Officers' (Discipline and Appeal) Regulations, 1977 (hereinafter referred to as 'Regulations 1977').

8. On 21.01.2019, Respondent passed an order rejecting the request of the Petitioner and Petitioner made further representations citing certain judgements in his favour. An order was passed by the Respondent on 11.02.2019, partly accepting the request of the Petitioner and agreeing to treat the suspension period as service without break for calculation of pension albeit from the date of acquittal and not from 29.11.2009, the date from which the Petitioner has started getting his pension, on the ground that Petitioner was not honourably acquitted in the criminal case and the acquittal was by giving benefit of doubt. Further representations of the Petitioner failed to evoke any positive response, constraining him to file the present writ petition.

9. Learned counsel for the Petitioner contended that Regulation 15(1) of the Regulations 1977 provides that where the employee is fully exonerated or the suspension is unjustifiable, he shall be granted full pay for the intervening period. Regulation 15(3)(a) further provides that where Regulation 15(1) applies, period of absence from duty shall, for all purposes, be treated as period spent on duty. The ground for denying the full salary for the suspension period is that the Petitioner has not been fully exonerated and was acquitted by giving benefit of doubt and 'no work no pay'. The stand of the Respondent is completely misconceived. Petitioner stands fully exonerated since the charge sheet in the disciplinary proceedings was quashed and the CBI Court has also acquitted him while convicting the others, where criminality and culpability was found by the Court, after detailed examination of the evidence, both oral and documentary. 43 witnesses were examined by the prosecution and documentary evidence runs into hundreds of exhibits. The acquittal is not based on any flaw in the prosecution case or on ground of non-examination of witnesses and/or any witness turning hostile. The Supreme Court in *Union of India and Others v. Methu Meda*, (2022) 1 SCC 1 and *Commissioner of Police, New Delhi and Another v. Mehar Singh*, (2013) 7 SCC 685, has held that the expressions 'honourable acquittal', 'acquitted of blame' and 'clean acquittal' have been coined by judicial pronouncements and in cases where accused is acquitted due to technicalities on account of faulty prosecution, compromise, etc., it can be said that accused is not honourably acquitted, however, acquittal on account of benefit of doubt is a complete acquittal on merits as observed in *Mohan Lal, Constable No. 744/L, 283/Sd, Delhi Police, Delhi v. Union of India & Others*, 1981 SCC OnLine Del 213.

10. Respondent has gravely erred in not treating the period of suspension towards calculation of the computation of pensionary benefits. There is no law which permits the Respondent to reckon the period from the date of acquittal by the Criminal Court instead of from the date of retirement of an employee. No provision of law or judgement has been cited by the Respondent for linking the computation of the period to the date of acquittal by the Criminal Court. In the

order dated 21.01.2019, reliance is placed by the Respondent on the judgement of the Supreme Court in Union of India and Others v. Jaipal Singh, (2004) 1 SCC 121, however, the said judgement is wholly inapplicable to the present case. First and foremost, it does not deal with the provision such as Regulation 15 of Regulations 1977. Secondly, it is not in the hands of an accused to control the length of time for which a criminal trial proceeds and therefore it is extremely dangerous to link the date of the judgement for the purpose of commencement of the period which is to be counted for pensionary benefits. Thirdly and importantly, in the said case the accused was convicted by the Trial Court and then suspended and finally reinstated on acquittal by the Sessions Court. In this background, the Supreme Court held that if an employee is convicted by the Trial Court and subsequently acquitted in an appeal, department cannot be faulted for having kept him out of service, since the law obliges a person convicted of an offence to be kept out and not retained in service. In this background, the Supreme Court held that the department cannot be made liable to pay for the period for which it did not avail the services of the employee and the High Court erred in allowing back wages. In the present case, Petitioner was acquitted by the Trial Court as contrasted to the facts in the aforementioned case.

11. It was further submitted that Petitioner is now 75 years of age and suffering from various ailments. He has already suffered for several years on account of a false and illegal charge sheet issued by the department as well as by the CBI, both of which stand quashed by the respective Courts, vindicating the stand of the Petitioner that he was innocent. There is thus no impediment in the way of the Petitioner in getting the reliefs sought for in the present petition.

12. Per contra, learned counsel for the Respondent submitted that most of the terminal dues of the Petitioner have been released, details of which have been given in the short affidavit. After the decision on 11.02.2019 to treat the period of suspension as period of service without any break from the date of acquittal, further amounts towards gratuity and commutation of pension/monthly pension have also been released. However, Petitioner is not entitled to terminal benefits from the date of superannuation for the reason that the revocation of suspension was made subject to the outcome of criminal proceedings, which have ended in acquittal but by giving benefit of doubt. The acquittal of the Petitioner is not honourable and cannot be termed as a case of "full exoneration". To support the contention, learned counsel had taken the Court through the relevant passages of the judgement of the Criminal Court delivered on 25.05.2018.

13. It was further urged that Regulation 15(1) provides that where the Competent Authority is of the view that the employee has been fully exonerated or the suspension was unjustifiable, the employee will be entitled to full pay together with allowances. Since in the present case, it cannot be said that the Petitioner is fully exonerated, he cannot be held entitled to full benefits and it is on this count that the difference in the full salary and subsistence allowance has been denied to the Petitioner. In support, reliance is placed on the judgement of

the Supreme Court in Jaipal Singh (supra).

14. Learned counsel also placed reliance on the judgement of the Supreme Court in Baldev Singh v. Union of India and Others, (2005) 8 SCC 747, to contend that once an employee is not in actual service for the period he is in custody, merely because there is an acquittal does not automatically entitle him to salary for the period concerned applying the principle of "no work no pay". For the same proposition, reliance was placed on the judgement in Banshi Dhar v. State of Rajasthan and Another, (2007) 1 SCC 324 and it was argued that it was only from the date the CBI Court acquitted the Petitioner that his service can be counted for the purpose of pension and gratuity. For the proposition that acquittal on ground of benefit of doubt cannot be considered as a case of full exoneration i.e. honourable acquittal, reliance was placed on the judgements in C.R. Radhakrishnan v. State of Kerala and Others, (2017) 13 SCC 365, Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, (1994) 1 SCC 541 and Methu Meda (supra).

15. I have heard the learned counsels for the parties and examined their contentions.

16. Two issues arise for consideration before this Court originating from the grievances ventilated by the Petitioner: (a) whether the Petitioner is entitled to full salary for the suspension period between 17.12.1994 to 13.12.2000; and (b) correctness of the action of the Respondent to treat the length of service as 25 years instead of 31 years in failing to reckon the suspension period 17.12.1994 to 13.12.2000, for purpose of computation of pension for the period 29.11.2009 to 25.05.2018.

17. Narrative of facts shows that Petitioner was placed under suspension on 17.12.1994 pursuant to a criminal case in which charge sheet was filed in October, 1994. He remained under suspension till the suspension order was revoked and he was reinstated on 14.12.2000, pending final adjudication in the criminal case and subject to outcome of contemplated disciplinary action. Respondent initiated departmental proceedings against the Petitioner by issuing a charge sheet on 06.10.2008, which was quashed by this Court by a judgment dated 29.10.2013 in W.P.(C) 7481/2008. Subsequently, Petitioner was acquitted in the criminal case on 25.05.2018. Pertinently, Respondent did not challenge the judgment dated 29.10.2013 quashing the charge sheet in the departmental proceedings and the State did not challenge the judgment in the criminal case, acquitting the Petitioner and thus both judgments have attained finality.

18. Rejection of the claims of the Petitioner by the Respondent is primarily predicated on its understanding that Petitioner was not 'honourably' acquitted by the Trial Court and therefore does not fit in the four corners of Regulation 15(1) of Regulations 1977, under which an employee is entitled to full salary and allowances only upon 'full exoneration' and/or where the 'suspension is found to be unjustifiable'. It is on this score that the Petitioner has been denied the

benefit of counting the suspension period for the purpose of computation of pension resulting in loss of six years and allowances/increments etc. minus the payments towards subsistence allowance. Counsel for the Petitioner laboured hard to establish that Petitioner's acquittal was a clean acquittal and not by giving benefit of doubt as the CBI Court had conducted a full-fledged trial examining 43 witnesses and hundreds of documents as exhibits and only on detailed examination of evidence had acquitted the Petitioner, while convicting 4 co-accused. In order to so demonstrate, learned counsel had taken the Court through the judgment of the Criminal Court, which is appended to the writ petition.

19. To test the contentions of the Respondent, Regulation 15 of Regulations 1977 would require an examination and the same is extracted hereunder, for ready reference:-

"15. Pay, Allowance and Treatment of Service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the competent authority may direct:

Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which such allowances are admissible;

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

(3) (a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty, unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose."

20. Plain reading of Regulation 15 (1) of Regulations 1977 shows that an employee concerned is entitled to full pay and allowances, if he is fully exonerated or his suspension is found to be unjustifiable. It is not in dispute that Respondent initially made payments to the Petitioner on account of Provident Fund (Petitioner's contribution), Gratuity, Leave Encashment, commutation of Pension and monthly pension is also being paid. Thereafter, a decision was taken

that the period of suspension from 17.12.1994 to 13.12.2000 will be treated as period of service without any break for the purpose of Gratuity and Pension from the date of acquittal in criminal proceedings i.e. 25.05.2018 and pursuant thereto additional terminal benefits towards Gratuity, commutation of Pension and monthly Pension were also paid. Therefore, the dispute that remains to be resolved between the parties is with respect to the salary for the suspension period minus the subsistence allowance paid and counting of the period for computation of Pension, which is required to be decided in light of the defence of the Respondent that Petitioner's acquittal is not a clean acquittal and doctrine of 'no work no pay'.

21. Impugned order shows that Respondent has placed reliance on the judgment of the Supreme Court in Jaipal Singh (supra), where the Supreme Court held that where an employee gets involved in a criminal case and after initial conviction gets acquitted on an appeal, Department cannot be faulted with for having kept him out of service and cannot be made liable to pay for the period for which it could not avail the services of the employee. Much was argued by the Respondent that the acquittal of the Petitioner is not a clean or honourable acquittal and therefore no interference is warranted in the exercise of discretion by the Respondent in treating the period of suspension as 'not on duty' and denying the balance wages for that period. In the short affidavit filed by the Respondent, a stand is taken that it is only upon 'full exoneration' or in a case where period of suspension is found to be unjustifiable under Regulation 15(1) read with 15(3)(b) of Regulations 1977 that period of absence from duty can be treated as period spent on duty and that in the present case, reading of the judgement of the criminal case would show that Petitioner's acquittal was not honourable so as to be termed as a case of 'full exoneration'.

22. Before proceeding further to examine the meaning and connotation of the expression 'full exoneration', which is really the bone of contention between the parties, Regulation 15(1) needs to be seen. A plain and a close reading of the said Regulation shows that an employee will be entitled to full pay and allowances on termination of suspension if he is fully exonerated 'or' his suspension was unjustifiable. Use of the word 'or' shows that the conditions are in the alternative, which means that even where the suspension is unjustifiable but an employee is fully exonerated, he would be entitled to wages for the suspension period. Therefore, it needs to be examined whether the Petitioner's suspension was unjustifiable and to my mind, the answer to this question cannot be in favour of the Petitioner. As a matter of fact, Petitioner was placed under suspension on 17.12.1994 in view of a charge-sheet filed by the CBI for penal offences as well as for alleged acts of corruption under the Prevention of Corruption Act, 1988. The suspension was revoked on 16.12.2000, without prejudice to the criminal/disciplinary proceedings pending/contemplated with further stipulation that payment of salary/wages for suspension period shall be decided upon final outcome of the pending criminal proceedings and contemplated disciplinary action. In view of the seriousness of the charge-sheet

filed by the CBI, it cannot be held that the suspension was unjustified. However, the provision is not restricted to 'unjustified suspension' since Regulation 15(1) entitles payment of pay and allowances where there is 'full exoneration' and in light of this stipulation, the moot question that requires consideration is whether Petitioner can be stated to be 'fully exonerated'. The expressions 'honourable acquittal', 'fully acquitted' and 'clean acquittal', were held to be unknown to Code of Criminal Procedure or Indian Penal Code and were developed by judicial pronouncements. In *Robert Stuart Wauchope v. Emperor*, 1933 SCC OnLine Cal 369, Lord Williams, J. observed as under:-

"10.

"The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what the government authorities term "honourably acquitted"."

23. In *Methu Meda* (supra), the Supreme Court once again examined the expression 'honourable acquittal' and held as under:-

"12. In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not "honourably" acquitted by the court, it be treated other than "honourable", and proceedings may follow.

13. The expression "honourable acquittal" has been considered in *S. Samuthiram* [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] after considering the judgments in *RBI v. Bhopal Singh Panchal* [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] and *R.P. Kapur* [R.P. Kapur v. Union of India, AIR 1964 SC 787] , *Raghava Rajgopalachari* [State of Assam v. Raghava Rajgopalachari, 1967 SCC OnLine SC 1 : (1972) 7 SLR 44] ; this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by

the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance of probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so."

24. In *Deputy Inspector General of Police and Another v. S. Samuthiram*, (2013) 1 SCC 598, the Supreme Court held that if a person is acquitted or discharged, it cannot always be inferred that he was falsely implicated and unless it is an honourable acquittal, benefits cannot be claimed. In the said judgment, the Supreme Court once again examined the meaning and connotation of the expression 'honourable acquittal' and held as follows:-

"10. Shri C. Paramasivam, learned counsel appearing for the appellant, submitted that the High Court was not justified in interfering with disciplinary proceedings and setting aside the order of dismissal of the respondent. The learned counsel submitted that the High Court overlooked the fact that the standard of proof in a domestic enquiry and criminal enquiry is different. The mere acquittal by the criminal court does not entitle the delinquent for exoneration in the disciplinary proceedings. The learned counsel also submitted that the case in hand is not where punishment of dismissal was imposed on the basis of conviction in a criminal trial and only in such situation, acquittal by a court in a criminal trial would have some relevance. Further, it was also pointed out that, in the instant case, the respondent was not honourably acquitted by the criminal court, but was acquitted since the complainant turned hostile."

25. From the conspectus of the aforesaid judgments, the principles that cumulatively emerge are that where the acquittal by a criminal court is on consideration of facts and evidence on record, both oral and documentary, with the finding that the guilt has not been proved, accepting the stand of the accused as just it will be treated as honourable acquittal. As held in *Methu Meda* (supra), if the prosecution is unable to prove the guilt for other reasons then it is not an honourable acquittal and for coming to this conclusion, the Supreme Court took strength from the observations of an earlier judgment in *S. Samuthiram* (supra), wherein the Supreme Court held that if the prosecution fails to take steps to examine crucial witnesses or where the witnesses turn hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted.

26. I have perused the judgement of the criminal court in light of the above principles. It is seen from the judgement that CBI had charge-sheeted several people including the accused for offences punishable under Sections 420/467/468/471 read with 120-B IPC and Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. In a nutshell, the charge was that during 1989, M/s PFLI represented by its Director conspired with officers of the Respondent Bank and obtained loan of Rs.26,67,694/- on the basis of forged documents and advance to the tune of Rs.16,30,900/- was given against five vehicles to M/s Geetanjali Motors Ltd. on the basis of forged bills and an amount

of Rs.10,36,794/- was given for purchase of three vehicles on duplicate bills of Rasna Automobile (P) Ltd. and neither of the two firms purchased or sold the vehicles. There were 8 accused in the matter and the prosecution examined 43 witnesses along with a plethora of documentary evidence. Defence also examined several witnesses and produced documentary evidence. By a detailed judgement dated 25.05.2018, the Trial Court held that prosecution had succeeded in proving its case against 4 accused beyond reasonable doubt and convicted them whereas the Petitioner along with Kuldeep Singh Malik were acquitted of all charges by giving benefit of doubt. From paragraph 155 onwards, the Trial Court has dealt with the case of the Petitioner who was working as Manager (loans) in the Bank and after examining the entire evidence and the arguments of the prosecution and the defence, rendered a finding that loan amounts with respect to five vehicles were already processed and released prior to the joining of the Petitioner as admitted by the prosecution and proved by D2W1 through mark 'D2W1/3' that Petitioner took charge of the Department of Loans on 22.07.1989 prior to which drawing power with respect to five vehicles was already entered into and released and therefore he could have no role or authority for approval of the agreements relating to the first five vehicles. Trial Court concluded that the act of the Petitioner in signing the agreements at subsequent stage can be termed as an irregularity on his part but criminality cannot be attributed to him on this account and the only role that comes up in relation to the transaction of five vehicles is that Petitioner signed the agreements considering it a mere formality and therefore he cannot be held accountable.

27. Insofar as the transaction with respect to the second tranche of three vehicles is concerned, the Trial Court noted that during October, 1989, documents were submitted in the Bank relating to finance of three vehicles, loans No.169, 170 and 171, which were not purchased by M/s. PFL and it is also true that Petitioner had signed and approved the three agreements and drawing powers were accordingly enhanced. Having so observed, the Trial Court further notes that the relevant documents i.e. invoices, receipts and insurance cover notes annexed to the agreements were not forged as they were procured from authorized places and persons, but later the payments were stopped towards the seller and insurer, resulting in cancellation of invoices and the documents were misused by Sushil Kumar Gupta, accused No.4, to cheat the Bank. In this backdrop, Trial Court held that it is quite possible that Petitioner was not personally knowing about the factum of stop payment of cheques by M/s. PFL towards purchase money of vehicles and insurance premium and therefore element of doubt arises and it cannot be concluded that Petitioner has acted dishonestly in favour of M/s. PFL, particularly, when it is evident that Senior Officer V.K. Bhutiani, accused No.1 was instrumental in handling the accounts of PFL. It was further held that the Directors of M/s. PFL have successfully defrauded the Bank with collusion of Senior Manager and the role of the Petitioner appears to be doubtful in the entire transaction and he is therefore

entitled to benefit of doubt.

28. On a close examination of the findings of the Trial Court, I am of the view that there is merit in the contention of the Petitioner that the prosecution despite producing 43 witnesses and hundreds of documents, was unable to establish the guilt of the Petitioner. The Trial Court has, upon examination of evidence, both oral and documentary, held that Petitioner cannot be held accountable for signing the agreements with respect to five vehicles, pertaining to which all necessary formalities stood completed even before he joined the Bank and therefore had no role in the transactions. With respect to the second transaction of three vehicles, it is clearly brought forth in the judgment that while the Petitioner had signed the agreements, the documents pertaining thereto such as the invoices, etc. were neither forged nor procured from unauthorized places/persons and it was later that accused No.4 had misused the documents to cheat the Bank and the Petitioner perhaps had no knowledge either of the stop payment of cheques by M/s. PFLL towards purchase money or insurance premium of the vehicles and it cannot be concluded that he had acted dishonestly. Trial Court found culpability with respect to 6 accused and convicted them while acquitting the Petitioner and to my mind, the mere use of the words 'benefit of doubt' cannot be read out of context and superfluously and will have to be given a meaning on a holistic reading of the judgement, where the Trial Court did not find that any culpability could be attached to the Petitioner.

29. Furthermore, it is not a case where the prosecution has failed to take steps to examine crucial witnesses or the witnesses turned hostile, etc., which are the category of cases in which the Supreme Court has held that an acquittal will not be termed as an honourable acquittal.

30. There is yet another aspect of the matter. It is true that even after an acquittal in a criminal case, an employee can be subjected to departmental proceedings and if found guilty of the misconduct, action can be taken in accordance with the rules and regulations governing disciplinary proceedings. Once a departmental proceeding is initiated, even on the same allegations for which there is acquittal and results in a finding of guilt and imposition of penalty, it is certainly open to an employer to pass an order directing that the employee will not be entitled to back wages for the suspension period and treat the suspension period as not spent on duty and/or any other consequence permissible in law. However, in the present case Respondent had already taken recourse to this path way back when charge sheet was issued on 06.10.2008. Petitioner had superannuated from the Respondent Bank on 30.06.2007, whereafter a charge sheet was issued post his retirement, preceded by a show-cause notice on 30.05.2007. The charge sheet pertained to the same set of allegations as in the criminal case. Charge sheet was challenged by the Petitioner by filing a writ petition in this Court being W.P.(C) No.7481/2008 and relying on Regulation 20(3)(ii) of 1979 Regulations of the Bank and the judgement of the Supreme Court in UCO Bank and Another v. Rajinder Lal Capoor, (2008) 5 SCC

257, this Court quashed the charge sheet vide judgment dated 29.10.2013. Relevant part of the judgment is as under:-

"7. The relevant paras of the judgment of Supreme Court in the case of UCO Bank (supra) are paras 13 to 23 and 29 to 31 and the same read as under:-

"13. Sub-regulation (1) of Regulation 20 of the 1979 Regulations, thus, deals with termination of service where the performance of an officer is unsatisfactory or inadequate or where there is a bona fide suspicion about his integrity or where his retention in the Bank's service is prejudicial to interests of the disciplinary procedure. Other sub-regulations of Regulation 20 provide for the mode and manner in which such termination may be effected as also his entitlement to prefer an appeal thereagainst and other benefits to which he would be otherwise entitled to.

14. Sub-regulation (2) of Regulation 20 of the 1979 Regulations places an embargo on an official to leave or discontinue his service of the Bank without giving a notice in writing. It prescribes a period of notice.

15. Sub-regulation (3) of Regulation 20, however, places an embargo on an officer to leave or discontinue or resign from service without the prior approval in writing of the competent authority and a notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority. Clause (ii) of sub-regulation (3) of Regulation 20 must be considered from that aspect of the matter. It raises a legal fiction. Such legal fiction has been raised only for the purpose of "this Regulation" and for no other, which would mean Regulation 20(1). The final orders which are required to be passed by the competent authority although indisputably would be in relation to the disciplinary proceedings but evidently it is for the purpose of accepting resignation or leaving or discontinuing of the service by the employee concerned or grant of approval thereof. Clause (ii) of sub-regulation (3) of Regulation 20 in effect and substance acts as a proviso to Clause (i) thereof.

16. Clause (iii) of sub-regulation (3) of Regulation 20 is an independent provision. It provides for continuation of the disciplinary proceedings. Such disciplinary proceedings indisputably for the purpose of applicability of sub-regulation (3) must have been initiated in terms of the 1976 Regulations.

17. It is worth noticing the distinction between terminologies "proceeding pending" or "proceeding initiated". Clause (ii) of sub-regulation (3) of Regulation 20 defines what would be pending viz. for the purpose of attracting Clause (i) thereof.

18. A disciplinary proceeding is initiated in terms of the 1976 Regulations, which are applicable only in a case where a proceeding is initiated for the purpose of taking disciplinary action against a delinquent officer for the purpose of imposing a punishment on him. Disciplinary proceedings, thus, are initiated only in terms

of the 1976 Regulations and not in terms of the 1979 Regulations.

19. It is worth noticing that the 1979 Regulations would be attracted when no disciplinary proceeding is possible to be initiated. The 1976 Regulations, however, on the other hand, would be attracted when a disciplinary proceeding is initiated. Both operate in separate fields. We do not see any nexus between Regulations 20(1) and 20(2) of the 1979 Regulations and the 1976 Regulations.

20. The 1976 Regulations provide for the mode and manner in which a disciplinary proceeding is initiated. It expressly provides for service of charge-sheet. Service of charge-sheet is a necessary ingredient for initiation of disciplinary proceedings. A preliminary enquiry is not contemplated under the 1976 Regulations. If such an enquiry is held, the same is only for the purpose of arriving at a satisfaction on the part of the disciplinary authority to initiate a proceeding and not for any other purpose.

21. If it is found that a disciplinary proceeding can be and should be initiated, recourse to the 1976 Regulations would have to be taken, if not, the 1979 Regulations may be resorted to if the conditions precedent therefor are satisfied. It is only with a view to put an embargo on the officer to leave his job, Clause (ii) of sub-regulation (3) of Regulation 20 of the 1979 Regulations has been made. Its scope is limited.

22. We have noticed hereinbefore that each regulations operate in different fields. When a proceeding is initiated for the purpose of taking any disciplinary action on the ground of any misconduct which might have been committed by the officer concerned indisputably the procedures laid down in the 1976 Regulations are required to be resorted to.

23. The 1979 Regulations would be attracted only for the purpose of termination of service. Had the intention of the regulation-making authority been that the legal fiction created under Clause (ii) of sub-regulation (3) of Regulation 20 would cover both Clauses (i) and (iii), the same should have been placed only after Clause (iii). In such an event, Clause (ii) of sub-regulation (3) of Regulation 20 should have been differently worded. Some non obstante clause would have been provided for making an exception to the applicability of the 1976 Regulations when a legal fiction is created, although it is required to be taken to the logical conclusion (see *East End Dwellings Co. Ltd. v. Finsbury Borough Council* [1952 AC 109 : (1951) 2 All ER 587 (HL)]), but the same would not mean that the effect thereof would be extended so as to transgress the scope and purport for which it is created.

xxxx xxxx xxxx xxxx

29. In terms of the 1976 Regulations drawing up of a charge-sheet by the disciplinary authority is the first step for initiation of a disciplinary proceeding. Unless and until, therefore, a charge-sheet is drawn up, a disciplinary proceeding for the purpose of the 1976 Regulations cannot be initiated. Drawing up of a

charge-sheet, therefore, is the condition precedent for initiation of a disciplinary proceeding. We have noticed in para 15 of our judgment that ordinarily no disciplinary proceedings can be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceeding despite the officers reaching the age of superannuation must be a statutory rule. A fortiori it must be a rule applicable to disciplinary proceedings.

30. There cannot be any doubt whatsoever that the employer may take resort to a preliminary inquiry, but it will bear repetition to state that the same has a limited role to play. But, in absence of the statutory rules operating in the field, resorting to a preliminary enquiry would not by itself be enough to hold that a departmental proceeding has been initiated.

31. Initiation of a disciplinary proceeding may lead to an evil or civil consequence. Thus, in absence of clear words, the court must lean in favour of an interpretation which has been applied by this Court in the main judgment.” (underlining added).

8. Since the admitted facts in this case are that chargesheet was issued to the petitioner only on 06.10.2008 i.e well after superannuation of the petitioner on 30.06.2007, therefore, in terms of the ratio in the case of UCO Bank (supra), disciplinary proceedings are initiated only on issuance of a chargesheet and not on issuing of show cause notice, and therefore, disciplinary proceedings could not be validly initiated in terms of the chargesheet issued after the superannuation of the petitioner. The impugned chargesheet is therefore liable to be and is accordingly quashed for this reason itself.

9. I may note that the basic charges against the petitioner with respect to the chargesheet issued on 06.10.2008 were with respect to factual allegations of the year 1989 i.e roughly 19 years earlier and when petitioner was the employee of his then employer M/s New Bank of India and which bank subsequently merged with the present respondent no. 1-Punjab National Bank. Since the charge sheet itself is quashed, and therefore there are no valid disciplinary proceedings against the petitioner, the respondent no. 1-bank also cannot invoke Regulation 20(3)(iii) to retain the retirement benefits of the petitioner.

10. In view of the above, writ petition is allowed by quashing of the charge sheet dated 06.10.2008 issued against the petitioner and directing that petitioner be paid his retirement benefits alongwith interest @ 6% per annum simple on the retirement dues payable with effect from 01.07.2007 and till the amount is paid to the petitioner. Parties are liable to bear their own costs.”

31. From a reading of the judgement, it is explicitly clear that the charge sheet was quashed by the Court on the ground that the Regulations did not permit the issuance of the same and since it was without jurisdiction, no liberty was granted to the Respondent to reinstate the disciplinary proceedings by issuing a fresh charge sheet. It is an admitted position that the judgement was not challenged

by the Respondent perhaps because it was realized that the issuance of the charge sheet was illegal. The net result is that neither in the departmental proceedings nor before the criminal court, Respondent has succeeded in proving the allegations/culpability against the Petitioner and he will be covered under the expression 'fully exonerated' within the meaning of Regulation 15(1) and therefore the impugned action of denying him the back wages for the suspension period minus the subsistence allowance is illegal and unjustified.

32. Insofar as the claim of the Petitioner for computing the period of suspension from 17.12.1994 to 13.12.2000 for the purpose of pension is concerned, the same is also valid. Respondent has already treated the said period towards qualifying service for pension but has denied the same for computation of pension as a result of which the length of service for calculation has been taken as 25 years instead of

31 years. Order dated 11.02.2019 counting the period of suspension towards qualifying service for calculation of terminal dues is extracted hereunder for ready reference:-

"...

Reg: Your, representation dated 04.06.2018 with regards to treatment of suspension period (from 17.12.1994 to 13.12.2000) as period in service and payment of back wages.

In continuation to our previous letter dated 21.01.2019 we inform you that the competent authority has agreed to treat your period of suspension from 17.12.1994 to 13.12.2000 as period of service without any break. Accordingly, the period of suspension shall be counted as qualifying service for calculation of terminal dues i.e., Gratuity and Pension from the date of your acquittal by Hon'ble special Judge CBI(PC Act)-06 i.e., 25.05.2018."

33. In *Dinesh Kumar Kain v. Assistant General Manager, Corpn Bank & Anr.*, 2006 SCC OnLine Del 448, this Court while dealing with a similar issue pertaining to a *pari materia* regulation, held the Petitioner entitled to counting the suspension period for the purpose of seniority, increments, etc. In the said case, Petitioner sought quashing of an order by which his claim for treating the period of suspension on duty with consequential benefits of back wages etc. was rejected. Petitioner was arrested and remanded to judicial custody for alleged offences under Prevention of Corruption Act. He was placed under suspension on arrest awaiting the outcome of the trial but no departmental proceedings were initiated. Petitioner was reinstated into service and subsequently he was acquitted of the charges. Invoking Regulation 15 (1) of the Corporation Bank Officers' (Discipline & Appeal) Regulations, 1982, Respondent decided not to treat the period of suspension on duty and pay and allowances for the said period were also declined. Period of suspension was, however, reckoned for limited purpose of continuity of service for Gratuity and Pension and no other purpose. It needs a mention that Regulations 15(1) and (2) in the said case are

pari materia to the Regulations in this case. The stand of the Respondent was that on a combined reading of Regulations 15(1) and (2), no employee can claim full back wages for the suspension occasioned by the criminal trial where the acquittal was after giving benefit of doubt.

34. The Court after examining the Regulations and the facts of the case including the order passed by the Respondent, whereby the period of suspension was treated to reckon for limited purpose of continuity of service for Gratuity and Pension and no other purpose, held that depriving the Petitioner of continuity of service for the purpose of consequential benefits of seniority, increments and other normal benefits would be oppressive and arbitrary.

35. This Court cannot disagree with the Respondent on the proposition of law that grant of back wages and/or treatment of suspension period as spent on duty or otherwise is a discretion which the employer is entitled to exercise and in fact, is the domain of the employer. To this extent, the judgements relied upon by the Respondent need not be again referred to as the principle is fairly well settled to be open to any debate. However, it is equally well settled that discretion has to be judiciously exercised and an arbitrary exercise of discretion is open to interference by a Court in judicial review under Article 226 of the Constitution of India which is an equity jurisdiction. The impugned order shows that the Respondent has not exercised the jurisdiction judiciously and has applied the doctrine of 'no work no pay' without examining the facts of the present case. It is true that the Petitioner was not working during the suspension period but that was on account of the suspension order issued by the Respondent since at that stage the criminal case was pending. However, when the impugned order was passed, the facts were on record and in knowledge of the Respondent that the criminal case had resulted in an acquittal and the charge sheet in the departmental proceedings stood quashed. At this stage, to invoke the doctrine of 'no work no pay', in my view, was completely arbitrary and illegal. Regulation 15(1) and (3) of Regulations 1977 does entitle the Respondent to deny back wages for the suspension period and/or treating the period as not spent on duty, but by a plain reading of the Regulation, it is clear that the provisions do not fetter grant of the said reliefs. These are enabling provisions permitting the Respondent to grant relief to an employee in case of full exoneration or where the suspension period is unjustified. In light of the two judicial orders in favour of the Petitioner, the question that begs an answer is whether the exercise of discretion to deny reliefs to the Petitioner was judicious and the answer can only be in the negative.

36. Learned counsel for the Respondent placed reliance on several judgements of the Supreme Court which are referred to above in paragraphs 13 and 14. The common thread that runs in the said judgements is that in case the acquittal is not honourable, the employer has the discretion to deny benefits to the employee and the grant of service benefit is not automatic. It bears repetition to state that there can be no quarrel on this binding dictum of the Supreme Court.

However, in the facts of the present case and in the light of the two judgements in favour of the Petitioner, one of this Court pertaining to disciplinary proceedings and the other of the Trial Court with respect to criminal proceedings, the Respondent cannot take the aid of these judgements to deny the benefit of reliefs claimed by the Petitioner in the present petition.

37. For all the aforesaid reasons, the writ petition is allowed quashing the impugned order dated 21.01.2019 and holding that Petitioner will be entitled to back wages for the suspension period, minus the amounts paid towards subsistence allowance and the suspension period from 17.12.1994 to 13.12.2000 will be treated as spent on duty. Accordingly, this period will be computed towards calculation of pensionary benefits and in light of this, Respondent is directed to re-fix the salary and emoluments of the Petitioner from 1994 giving benefits of increments and pay revisions, wherever applicable and release the arrears of pension calculated after taking six additional years of service towards computation of pensionary benefits.

38. Writ petition stands disposed of with no orders as to costs.