

**(2006) 06 GAU CK 0022**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 2662 of 2002**

Kalmanje Ganapati

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

**Date of Decision : 20-06-2006**

**Acts Referred:**

Bank Officer Employees (Conduct) Regulations, 1976 — Regulation 3(1)  
Bank Officers Employees (Discipline and Appeal) (Amendment) Regulations, 1985 —  
Regulation 12, 4, 6(4)  
Constitution of India, 1950 — Article 226, 311

**Citation : (2006) 3 GLT 203**

**Hon'ble Judges : A.H. Saikia, J**

**Bench : Single Bench**

**Advocate : D.P. Chaliha and K. Baruah, for the Appellant; B.R. Dey, B. Choudhury and A.K. Paul, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

A.H. Saikia, J.—Heard Mr. D.P. Chaliha, learned Sr. Advocate, assisted by Ms. K. Baruah, learned counsel for the Petitioner. Also heard Mr. B.R. Dey, learned Sr. counsel assisted by Ms. D. Choudhury and Mr. A.K. Paul, learned Counsel representing the Bank/Respondents (for short, "the Bank").

2. That writ Petitioner, an employee of the Bank, was initially appointed on 20.09.73 as a clerk and then by dint of hard work and sincerity he got various promotions and eventually rose to the post of Manager. While working at Digboi Branch in the capacity of Manager on being posted therein in the year 1973, he was charged with allegations of commission of serious irregularities and to that effect he was served with a show cause vide 15.03.94 and by the same order he was also put under suspension with immediate effect in terms of the Regulation 12 of the Indian Bank Officers Employees" (Discipline & Appeal) (Amendment) Regulations, 1985 (for short, "the D & A Regulation").

3. The allegations levelled against the Petitioner may be noticed as follows:

1. You had purchased withdrawal slip No. 0372181 for Rs. 50,000/- drawn by you on your SB A/c at our Udayagiri Extension branch under BP No. 167 on 04.09.93. The debit voucher was prepared and signed by you and the cash was received by you.

You yourself made entries in the BP register folio No. 63 & 64.

Though entry was made in the Despatch register under Registered post you had not ensured despatch of the instrument by entering the registered post number.

You had fraudulently reversed the above BP on 17.09.93 to the debit of Sundry Deposit showing it as realized.

2. Though you knew very well that the 2nd installment of Rs. 6000/- remitted by Shri Promod Kumar Agarwalla in his RD/Ac 8770 on 17.12.93 was misappropriated by Shri Kaushik Auditya, the Cashier, you have not reported the matter.

3. You had authorized opening of the current account in the name of Shri Pramod Kumar Agarwala on 21.12.93 without getting any introducing and sanctioned over draft facility of Rs. 50,000/- against 2 RIP and one RD accounts amounting to Rs. 61,385/- on 28.12.93. The RIP deposits amounting to Rs. 55,385/- are in the name of 3rd party against which only 75% of the deposit amount can be advanced at the rate of interest applicable to the activity that the borrower undertakes. Thus you had sanctioned the facility in violation of the guidelines and further allowed excess of Rs. 19,521/- over and above the sanctioned limit of Rs. 50,000/- by passing a cheque for Rs. 20,000/- on 03.01.94 without routing it through the funds book. You had not reported the sanction of the above facility and the excess allowed by you in this account to the higher authorities.

4. SB A/c No. 4691 in the name of Sujivan Razak is a LTI operated account, whereas the withdrawal slips Nos. 0025562 for Rs. 2,500/- and 0025563 for Rs. 2,000/- which bear some signature were paid through Teller counter on 15.09.93. Though the fraudulent withdrawal had come to your knowledge while checking the SB ledger containing the above SB a/c 4691, you have not reported the matter to the higher authorities.

5. You have sanctioned a loan for Rs. 5,000/- on 01.07.93 to Shri P. Kundu Cleark/ Shroff of the branch against 5 RD accounts numbered 7002, 7733, 7783, 7882 and 8081, including the RD accounts in the name of Proloy Boruah (RD 7733) which was closed on 10.02.93 and hence on existence and the RD account in the name of Hari Kesore Kumar Kachari (RD 7882) which was fraudulently pledged by Shri P. Kundu.

4. In reply to the above show cause the Petitioner by his reply dated 12.04.94 explained the situation prevailing at the relevant time in Assam under which he had to act under tremendous threat and insecurity and accordingly a prayer was made to condone the lapses he committed and to revoke the suspension.

5. However by communication dated 07.11.94, the Petitioner was informed that he committed serious irregularities/certain acts of commission and omission in regard to those allegations mentioned above which if proved would constitute misconduct in terms of Regulation 3(1) of the Indian Bank Officer Employees" (Conduct) Regulations, 1976 (for short, "the Regulation") being punishable under Regulation 4 of the D & A Regulation and accordingly a statement of imputations of misconduct based on which articles of charges were framed, was also sent with the said communication.

6. The reply was also submitted against the said communication dated 07.11.1994 by the Petitioner on 03.02.95.

7. The Bank by its communication (confidential) dated 12.05.95 informed the Petitioner that his reply in defence dated 03.02.95 was not satisfactory and accordingly the authority proposed to hold an enquiry into the charges levelled against him in terms of Regulation 6(4) of the D & A Regulation.

8. On enquiry being conducted by the disciplinary authority, all those charges found to be proved and consequently the Bank by the impugned order dated 13.03.2001 imposed upon the Petitioner a major penalty of compulsory retirement from the services of the Bank in terms of Regulation 4(h) of the D & A Regulation.

9. Against such punishment, the Petitioner preferred an appeal before the competent appellate authority and the same was also dismissed by the impugned order dated 31.05.02.

10. Both the order of imposition of major penalty of compulsory retirement passed on 13.03.01 and the order dated 31.05.02 dismissing the appeal preferred by the Petitioner before the appellate authority against the order of compulsory retirement have been assailed in this writ petition.

11. Mr. Chaliha, learned Sr. counsel has contended that after Petitioner's suspension by order dated 15.03.94 on consideration of his application praying for revocation of the suspension order after initiation of the departmental proceeding against him, the Bank-Respondent No. 3 by order dated 08.12.95 reinstated the Petitioner in his service and accordingly he joined his duty on 26.12.95 at the Regional Office at Guwahati.

12. After his reinstatement the Petitioner was allowed to serve at various branches of the Bank either in the capacity of acting Branch Manager and/or as Assistant Manager till his compulsory retirement by the impugned order i.e. 13.03.01.

13. According to the learned Sr. counsel, since the date of Petitioner's appointment in 1973 till his suspension i.e. on 15.03.94 for all those 20 years of period he maintained an unblemished service career and served the Bank to the fullest satisfaction of the authorities and on consideration of his such excellent service career he was promoted by the Bank to various higher posts and

ultimately he was allowed to hold the post of Manager which he was holding at the time of his suspension though he started his service career from clerical cadre in the Bank.

14. It is also contended that even during the pendency of the disciplinary proceeding, on 08.12.95 the Petitioner was reinstated and his best service had been exploited by the Bank in various capacity and that too without any grievance, allegation blame whatsoever. Even no adverse remark was recorded against the Petitioner in the last seven years till the impugned order was passed i.e. on 13.03.01. Such action on the part of the Bank according to Mr. Chaliha, learned Sr. counsel clearly goes to show that the imposition of punishment of compulsory retirement on the Petitioner was not in the public interest because he was not considered to be a dead wood or his services could not be said to be of no utility.

15. Moreso, it is contended that the Petitioner had not committed any misconduct as provided under Regulation 3(1) of the Regulation relying upon which Petitioner was imposed with such major penalty. The said clause cannot be attracted in the instant case to constitute any misconduct as held in the instant case by the Bank inasmuch as the Petitioner was all along discharging his duties with utmost integrity and sincerity to protect the interests of the Bank.

16. Clause 3(1) of the Regulation reads as under:

Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

17. In view of the same, it is submitted, the Petitioner's punishment of compulsory retirement is shockingly disproportionate and the Bank ought to have imposed any other penalty available under the Regulation save and except the compulsory retirement allowing him to continue in service since the Petitioner was already allowed to work for 7 years on reinstatement in his service by the suspension order.

18. In support of the impugned order Mr. Dey, learned Sr. Counsel, relying on the affidavit-in-opposition particularly in paragraphs 5, 7, and 14 filed by the Bank, has strenuously argued that once the Petitioner himself in his reply dated 12.04.04 admitted his own guilt by giving some baseless and afterthought clarification which could never be acceptable, the punishment of compulsory retirement was proportionate to the offence committed by him. It is also contended that when the charge No. 1 was relating to purchase of withdrawal slip of Rs. 50,000/- (Rupees fifty thousand) on 04.09.93 at Udayagiri Extension Branch by himself, he did not inform the matter to the Bank though there was sufficient time to do the same before issuance of the suspension order on 15.03.94. Even by the above representation dated 12.04.94, the Petitioner put a request before the Bank to condone the irregularities done by him by stating that

since the amount in question i.e. Rs. 50,000/- was being deposited, there was no loss to the Bank.

19. Mr. Dey has further submitted that once the charge against the Petitioner was proved, this Court in exercise of its power under Article 226 of the Constitution of India should be very slow in interfering with the order on quantum of punishment because it is exclusively for the employer to decide.

20. Relying on a decision of the Apex Court reported in Central Provident Fund Commissioner and others Vs. Ashok Dubey and others, wherein it was held that trust and confidence constituted the hallmark of a Banking Institution, the learned Sr. Counsel appearing for the Bank has submitted that the conduct of the Petitioner was such of nature, as reflected from the fact situation, that he lost the trust and confidence of the Bank and there was no alternative but to impose the penalty of compulsory retirement. Reference has also been made to another decision reported in Sudhir Vishnu Panvalkar Vs. Bank of India, Sudhir Vishnu Panvalkar Vs. Bank of India, by Mr. Dey to the effect that the Bank was constrained to resort to retire the Petitioner compulsorily because of loss of confidence.

21. Having carefully considered the contentions and arguments canvassed on behalf of the contesting parties and also on meticulous scanning of the materials available on record including the impugned orders as well as the order dated 08.12.95 reinstating the Petitioner in service on revocation of his suspension order dated 15.03.94, it is seen that the learned Counsel for the Petitioner has fairly not challenged the disciplinary proceeding in which all the charges levelled against him was found to be proved but his limited argument is that the imposition of punishment of compulsory retirement considering the nature of allegations levelled against the Petitioner is shockingly disproportionate.

22. True, it is settled law that once charge against delinquent is established, the quantum of punishment is for the employer to decide and the Court should not ordinarily interfere with the quantum of punishment, once comes to a conclusion that there has been no infirmity with the procedure.

23. However question remains to be decided is whether the punishment of compulsory retirement as in the instant case, is proportionate to the proved charges levelled against the Petitioner.

24. Law is also established that the compulsory retirement in public interest under service rule is like pre-mature retirement which does not cast any stigma. The purpose and object of pre-mature retirement imposed on an employee is to weed out the inefficient, corrupt, dishonest or the dead wood whose service practically of no utility to the employer.

25. The law relating to compulsory retirement has been settled by the Supreme Court in a decision reported in State of Gujarat Vs. Umedbhai M. Patel, and State of Gujarat Vs. Umedbhai M. Patel, . In paragraph 11 it reads as under:

11. The law relating to compulsory retirement has now crystallized into a definite principles, which could be broadly summarized thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest,

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution,

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order,

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer, (viii) Compulsory retirement shall not be imposed as a punitive measure.

26. In the backdrop of above settled legal provision of compulsory retirement as well as applying such principles in the present case, it appears that despite the initiation of departmental proceeding on the basis of serious allegations levelled against the Petitioner, he was even reinstated on revocation of suspension order and was allowed to continue in service in the managerial capacity for long seven years and during these period, the record does not reveal that Petitioner was at any time found to be dishonest corrupt and inefficient for banking service. Even record shows that at the time of his initial reinstatement he was posted at the Regional Office. Significantly there is no whisper in the impugned order that prior to issuance of the order of compulsory retirement, due regard to the entire service record of the Petitioner was given. Records also do not reflect any adverse entries in his confidential record. Apart from that, the fundamental fact is that despite such alleged serious irregularities, the Bank with absolute trust and confidence allowed the Petitioner to work in the Bank for considerable period by putting him in responsible administrative post. The entire facts constitute that the Petitioner's service was all throughout essential for the Bank even during the pendency of the departmental enquiry against him.

27. Coming to the submission advanced on behalf of the Bank to the effect that the Bank lost its confidence and trust on the Petitioner for which he was punished with compulsory retirement, it is amazing when the Bank lost its confidence upon the Petitioner, how they could allow the Petitioner to serve the Institution for

another long period of seven years from the date of his reinstatement and during this service period there was no complaint against him that he did such thing so as to lose trust and confidence of the Bank. Abruptly, after taking his service for seven years, the penalty of compulsory retirement was imposed upon him and such action, obviously, smacks of malafide and arbitrariness.

28. It also transpires from the record that the Bank has not suffered any loss on account of those irregularities for which the Petitioner was charged. It is not a case of the Bank that the services of the Petitioner is no longer useful to Bank in the public interest.

29. Since compulsory retirement cannot be imposed as punitive measure and also taking into account the attending facts and circumstance in its entirety, this Court is of the considered view that the impugned imposition of penalty on the Petitioner of compulsory retirement from his services is disproportionate to the proved charges.

30. For the foregoing reasons, observations and discussions, this Court has no hesitation to interfere with the impugned orders dated 13.03.01 and 31.05.02 and the matter is remanded to the disciplinary authority of the Bank for re-examining the same and thereupon for taking a fresh decision as to the penalty to be imposed upon the Petitioner other than the penalty of compulsory retirement allowing the Petitioner to continue in his service. Needless to say that this shall be done after affording reasonable opportunity of hearing to the Petitioner to defend his case on the question of penalty only.

31. In the result, this writ petition stands allowed. No costs.