

(2005) 03 AHC CK 0162
In the Allahabad High Court
Case No : Writ Petition No.2561 (S/B) of 1989

K.D.Tiwari

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 — Regulation 3(j), 6(7)

Citation : (2005) 03 AHC CK 0162

Hon'ble Judges : Pradeep Kant, J and N.K.Mehrotra, J

Final Decision : Dismissed

Judgement

1. The petitioner, an officer of the erstwhile Hindustan Commercial Bank become an officer of Punjab National Bank on its merger with the latter Bank. It appears that certain disciplinary proceedings initiated against the petitioner in respect of certain over drafts and other charges were continuing at the time of merger of Hindustan Commercial Bank, therefore, they continued to remain pending. During the course of the proceedings, the petitioner has filed this petition saying that in the enquiry, he should be allowed to have the services of a retired officer of the Bank as Defence Representative but since his prayer was not accepted therefore, this writ petition was filed.

2. Initially an interim order was passed to the effect on 30.3.1989 that final order shall not be passed but the enquiry may go on. Later on this order was modified by order dated 3.4.1989 and the petitioner was allowed to engage a retired employee as defence representative and for completing the enquiry. The Bank however, did not complete the enquiry as according to the Bank's counsel, the engagement of retired Bank employee as defence representative was against the rules. The enquiry thus is still pending.

3. The learned counsel for the petitioner has submitted that the inquiry has been lingering on for the last several years for no fault of the petitioner and despite the interim order of the High Court allowing the Bank to continue enquiry, the

enquiry has not been conducted and therefore, the same should be quashed only on the ground of delay. He was also submitted that the demand of the petitioner for having the services of a retired Bank Officer/employee was wrongly rejected as under Regulation 6(7), there is no bar for an officer/employee of the Bank who is facing departmental proceedings to have the services of a retired Bank employee.

4. Another argument has been raised by the learned counsel for the petitioner that suit No.32 of 1985 was filed in the Court of the Civil Judge, Unnao by one M/s Gupta Cold Storage, against the Bank in respect of the same over drafts in which the Bank had taken the stand that the over drafts, limit was duly granted by the Bank and the said suit has been decreed in favour of the plaintiff. Relying upon the said facts, it is being argued that there is no justification for continuing any enquiry.

5. In response, the learned counsel for the Bank Shri Shilendra Kumar has submitted that since the High Court's direction was to allow the services of the retired officer of the Bank as Defence Representative which could not have been permitted in view of the regulation in question, the Bank could not hold the enquiry but there is no deliberate default on the part of the Bank in not concluding the enquiry.

6. He also explains the scope of Regulation 6 subclause (7) of Punjab National Bank Officer Employees" (Discipline & Appeal) Regulations, 1977. Regulation 6 deals with the procedure for imposing major penalties and subclause 7 provides as under:

?The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the presenting officer, appointed by the Disciplinary authority is a legal practitioner or the disciplinary Authority, having regard to the circumstances of the case so permits.?

7. The term ?Officer employee? has been defined in Regulation 3 subclause (j), which reads as under:

?Officer employee means a person who hold a supervisory administrative or managerial post in the Bank or any other person who has been appointed and is functioning as an officer of the Bank by whatever designations called and includes a person whose services are temporarily placed at the disposal of the Central Government or a State undertaking or any other Government Undertaking or any other public sector, Bank or the Reserve Bank of India or any other organization, but shall not include casual, work charged or contingent staff or the award staff.?

8. The aforesaid provisions of subclause (7) of Regulation 6 allows the officer employee namely; the charged officer to take the assistance of any other officer employee; who is an officer employee has also been defined in subclause (j) of Regulation 3. The officer employee is an employee of the Bank who is in service

of the Bank and is holding supervisory, administrative or managerial post or any other officer who has been appointed and is functioning as officer of the Bank by whatever designation, he may be addressed. This means that the aforesaid Regulation 3(j) read together with Regulation 6(7) clearly makes out that it is only the serving "officer employee" who can be allowed to act as defence representative of other "officer employee". The officer employee who is the charged officer is undoubtedly in the service of the Bank within the meaning of the term as defined in subclause (j) of Regulation 3 and likewise, the defence representative shall also be an employee of the Bank who is in service. Clarifying the aforesaid position namely; who shall be an officer employee within the meaning of the aforesaid definition, the provision further says that an officer whose services are temporarily placed at the disposal of the Central Government or the State Undertaking or any other Government Undertaking or any other public sector Bank or the Reserve Bank of India or any other organization shall also be included in the definition of the officer employee.

9. The language used and the phraseology mentioned in subclause (j) of Regulation 3 makes it explicit that it is only the serving Bank employee who can give assistance to a charged officer by acting as defence representative.

10. The officer or employee of the Bank who has retired, no more would fall within the definition of officer employee as given in subclause (j) of Regulation 3 nor would fall within the meaning of "Officer Employee" as used in Regulation 6(7) which gives the right to the officer employee namely; charged officer to have assistance of another officer employee. It means that only an "officer employee" can act as defence representative and the said term having been defined in the regulation itself cannot be given any other meaning. The language and the words used in the aforesaid Regulation are not ambiguous and therefore, the Court would not enlarge the definition of the term "officer employee" which term has been used consciously in the aforesaid two provisions. While interpreting a rule or regulation, the words used have to be given their simple meaning which also fulfils the intention of the rule. Therefore, the said provisions do not call for any other inference with respect to the meaning of the term "officer employee" nor the scope of the said term can be enlarged by the Court while interpreting the aforesaid provisions nor any words can be imported or added to, in the two provisions.

11. The arguments of the learned counsel for the petitioner that the aforesaid regulation since does not specifically prohibit the engagement of the "officer employee" who has already retired as defence representative cannot be accepted in view of the specific provisions aforesaid. Regulation 6(7) though does not say that a retired Bank officer/employee cannot be engaged as defence representative by a charged officer but when the aforesaid provisions specifically describe the officer employee who can be appointed as defence representative it give to liberty to the "officer employee" namely; charged officer to engage any other person including a retired Bank employee or Bank officer for acting as

defence representative. An "officer employee" having been defined and right to engage an "officer employee" as defence representative having been restricted from amongst such "officer employee" as defined in the Regulation, itself, the petitioner cannot claim the service of any other employee or a retired Bank Officer/employee to have a defence representative. The plea is therefore, rejected.

12. In view of the aforesaid clear position, we do not find any substance in the prayer of the petitioner that a retired officer/employee of the Bank can also be engaged as defence representative for any disciplinary proceedings against the officer employee.

13. Our view is also fortified by the judgment in the case of Chairman, Aligarh Gramin Bank, Aligarh v. Latoori Singh, 2003 (1) Bank CLR 193 (Allahabad). In this case also the right of representation of the charged employee in the aforesaid Bank was considered in view of the Regulations 62, 43 and 38 of Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000. The Division Bench found that the right of representation in disciplinary enquiry is regulated by the statutory rules and unless the rules permit, the employee has no right to claim engagement of defence representative from anywhere out side the Bank.

14. We therefore, reject the contention of the petitioner that the refusal on the part of the Bank in not providing assistance of officer employee of the Bank who was retired is contrary to law.

15. In respect of the prayer for inspection of document, the learned counsel for the petitioner says that this prayer is not pressed and the same be rejected.

16. For the reasons stated above, we do not find any substance in the petition.

18. The writ petition is dismissed. We further direct that since the enquiry is lingering on for such a long time, the same shall be expected and completed within four months from the date of receipt of a copy of this order. The petitioner shall cooperate in the enquiry in question.

(Petition dismissed)