(1999) 09 GAU CK 0025

In the Gauhati High Court

Case No : Writ Appeal No. 504 of 1994

Madan Chandra Brahma APPELLANT

Vs

Central Bank of India and Others RESPONDENT

Date of Decision : 16-09-1999

Acts Referred:

Central Bank of India (Officers) Service Regulations, 1979 — Regulation 19
Central Bank of India (Officers) Service Rules, 1979 — Rule 1

Citation : (2000) 1 GLT 552

Hon'ble Judges : Brijesh Kumar, C.J;B. Biswas, J

Bench : Division Bench

Advocate : Mr. N. Dutta, Mr. B. Goswami and Mr. P.J. Phukan, for the Appellant; Mr. P. Prasad, Mr. A.C. Sarma and Mr. C. Das, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Central Bank of India and Others Vs. Madan Chandra Brahma and Another, AIR 2008 SC 15 : (2008) 116 FLR 88 : (2007) 10 JT 299 : (2007) 10 SCALE 251 : (2007) 8 SCC 294 : (2007) 2 SCC(L&S) 910 : (2007) 9 SCR 275 : (2008) 2 SLJ 164 : (2007) 2 UJ 1029 : (2007) AIRSCW 6016 : (2007) 6 Supreme 303

Brijesh Kumar, C.J.—This writ appeal is preferred against the judgment and order dated 14.11.1994 dismissing the petition preferred by the appellant relating to age of his retirement. According to the learned Single Judge the petitioner was liable to retire at the age of 58 years.

2. We have heard Shri N. Dutta, learned counsel for the appellant and Shri A.C. Sarma, learned counsel appearing on behalf of the respondent Central Bank of India.

3. The undisputed facts are that the appellant was appointed as Assistant in the Gauhati Bank on 9.6.1969. The Gauhati Bank was merged with Purbanchal Bank with effect from 1.8.1975. Again the Purbanchal Bank was merged with the

Central Bank of India with effect from 29.8.1990. On merger of the Purbanchal Bank with the Central Bank of India, required provisions were made relating to the employees of the erstwhile Purbanchal Bank and a scheme of amalgamation of Purbanchal Bank with the Central Bank of India was promulgated u/s 75(7) of the Banking Regulations, 1949. This scheme was notified on August 29, 1990. It was to take effect from 29.8.1990. Clause 10 of the Scheme provides that all the employees of the transferer bank shall continue in service and deem to have been appointed by the transferee bank at the same remuneration and same terms and conditions of service as applicable to such employees immediately before close of business on 14.7.1990. According to Clause 11 of the scheme the transferee bank within a period of 3 years of the sanction of the scheme, had to pay or grant to the employees of the transferer bank the same remuneration and same terms and conditions of service which are applicable to the employees of the corresponding rank or status of the transferee bank subject to qualification and experience. From the provisions indicated above, it is clear that according to the scheme promulgated by the Central Bank of India all the employees of the transferrer bank were to be continued on the same conditions on which they have been working and then within a period of three years of the sanction of the scheme they were to be brought at par with the corresponding rank or status of the employees and officers of the transferee bank. In pursuance whereof a decision was taken by the Central Bank of India dated May 6, 1991, a copy of which has been filed as Annexure-F to the writ petition. It is about pay and other service conditions of officers and employees of erstwhile Purbanchal Bank which merged with the Central Bank of India on August 29, 1990. It was with a view to bringing parity in pay and allowances and other terms and conditions of service of workmen of erstwhile Purbanchal Bank Limited as applicable to the employees of the Central Bank of India. Clause 3 of the said notification provides that officer and employees of the erstwhile Purbanchal Bank would be governed by the Central Bank of India (Officers'' Service) Regulations, 1979, with effect from April 1, 1990. In regard to the seniority for the purpose of promotion etc. provision has been made in Clause 6 of the same notification. A formula has been indicated in Clause 6.1 and 6.2 as to the manner in which the seniority of the employee/officers of the transferer bank was to be reckoned as officers of the transferee bank. One and half year of service rendered In Purbanchal Bank is to be treated as one year of service in the same scale of the Transferee Bank. Similar formula was indicated for the purpose of placing officers in the scale one of the Transferee Bank. Para 6.5 provides that for all other purposes such as provident fund, gratuity, eligibility for sanction of various loans etc. the length of service in the erstwhile Purbanchal Bank would be reckoned in full. That is to say, for all purposes other than those indicated in paragraphs 6.1 and 6.2 the full length of service as rendered in the transferer bank was to be given full account.

4. The retirement of an officer of the Central Bank of India is dealt with under Regulation 19, Rule 1 of the Central Bank of India (Officers) Service Regulations, 1979. It provides as under -

"1. Rules for age of retirement - The age of retirement of an officer In the Bank on or after the appointed date be determined as under -

1.1 An officer employee of the Bank recruited/promoted prior to 19th July, 1969 shall retire on completion of the 60 years of age.

1.2 An officer employee of the Bank recruited/promoted prior to 19th July, 1969 shall retire on completion of 60 years of age.

1.3 An officer employee of the Bank recruited whether as an Award Staff or as an officer employee on or after 19th July, 1969 shall retire on completion of 58 years of age.

Note : (i) An officer would retire on the last day of the month in which he completes his age of retirement;

(ii) Where the date of birth of an officer is first day or the month, he shall retire from the service of the Bank on the last day of the preceding month e.g. if date of birth of an officer is say 1st April, then he will retire on 31st March."

5. According to the Regulations quoted above, the petitioner''s case is that he would retire at the age of 60 years as provided in Clause 1.2 as he was appointed prior to 19th July, 1969 and was promoted as officer thereafter. Whereas according to the respondents para 1.3 would be applicable, according to which the petitioner-appellant would retire at the age of 58 years. It is submitted and also found by the learned Single Judge that the petitioner-appellant became an officer of the Central Bank of India with effect from 1.4.1991 therefore, he would be taken to have been recruited as an officer of the Central Bank of India after July 19, 1969.

6. Learned counsel for the respondent Bank also submits that the petitioner appellant has to be taken to have been recruited as officer after July, 1969, hence he is liable to go on retirement at the age of 58 years. It is, however, difficult to find as to on what basis it is submitted and as also found by the Single Judge that the petitioner-appellant was recruited in the Central Bank of India with effect from 1.4.1991. As a matter of fact by resolution made on May 6, 1991 it was decided that such officers shall be governed by the Central Bank of India (Officers) Service Regulations, 1979 with effect from 1st April, 1991. It is to be clearly found in Clause 3 of the notification dated May 6, 1991 that application of Service Regulations of officers of the Central Bank would not amount to same as recruitment of such officers from the date of application of the Rules. As indicated earlier, the resolution/notification dated May 6, 1991 was issued in pursuance of Clause 11 of the amalgamation Scheme which provides that during the period of 3 years the transferee bank had to pay to the employees of the transferer bank the same remuneration and apply the same terms and conditions as applicable to the corresponding bank of the transferee bank. It was this clause namely, Clause 11 that was implemented by the notification dated 6.5.1991. We, therefore, find no basis for the finding as

recorded by the learned Single Judge that the petitioner-appellant has to be taken to be recruited as an officer of the Central Bank as on 1.4.1991. There is no dispute about the fact that initially the petitioner-appellant was appointed on 9.6.1969. There is also no dispute about the provision which says, for all other purpose the services rendered in the erstwhile transferer bank shall be reckoned in full. This would, in our view, apply in all matters except for the purpose of length of service or seniority for the purpose of promotion or for placement in Scale I of the officers. For the rest of the purposes it will be governed by Clause 6.5 of the notification dated 6.5.1991. In this view of the matter there is no reason to deny the benefit of service rendered by the petitioner-appellant in the erstwhile transferer bank in full. In that event, the petitioner though recruited prior to 19th July, 1969 was promoted as officer thereafter, his case would therefore fall under Clause 1.2 of Rule 1 of Regulation 19 of the 1979 Regulations. The petitioner thus was entitled to continue upto the age of 60 years.

7. In view of the discussion held above, the appeal is allowed and we set aside the order passed by the learned Single Judge, as well as the order dated 17.7.1994 (Annexure-I to the writ petition). It is informed that the petitioner has already attained the age of 60 years. In the said circumstances, the respondents are directed to clear off all the arrears of salary and other allowances as admissible to the petitioner, if he was allowed to continue upto the age of 60 years, within a period of three months. The post retrial benefits shall also be paid forthwith.

8. Cost easy.

