**(2004) 08 DEL CK 0099**

**In the Delhi High Court**

**Case No :** WP (C) 7890 of 2002

Mr. G.K. Ahuja APPELLANT

Vs

Punjab National Bank RESPONDENT

**Date of Decision :** 10-08-2004

**Acts Referred:**
- Central Civil Services (Pension) Rules, 1972 — Rule 23
- Punjab National Bank (Employees) Pension Regulations, 1995 — Regulation 56

**Citation :** (2004) 76 DRJ 340 : (2004) 3 LLJ 960

**Hon'ble Judges :** Manmohan Sarin, J

**Bench :** Single Bench

**Advocate :** Ashok Bhalla, for the Appellant; S.K. Pruthi, for the Respondent

**Final Decision :** Disposed Off

# Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. Petitioner has filed this writ petition seeking a writ of mandamus for payment of his retiral benefits. Petitioner had opted for Voluntary Retirement Scheme (In short V.R.S). The grievance of the petitioner is that unauthorised deduction was made out of the amounts due to him on account of V.R.S. Petitioner protested against the same. Over a period of time, the controversy got narrowed down. Notional increments for the period of suspension were being computed. Based on the proceedings that took place in the writ petition, the petitioner accepted payments of Rs. 24,366.42 and Rs. 35,082.37 on 22nd October, 2003, without prejudice to the rights and contentions of the parties.

3. Learned counsel for the petitioner Mr. Ashok Bhalla has submitted that the only subsisting grievance of the petitioner is with regard to denial by the respondent of counting the ""period of suspension"" as period of qualifying service. This, he says, has an adverse effect on the computation of his pensionary benefit.

 

4. The precise submission of learned counsel for the petitioner is that even though the Disciplinary Authority had imposed the major penalty of reduction of salary by three stages in the time scale of pay for a period of five years, the same was not maintained by the Appellate Authority. The Appellate Authority imposed the punishment of reduction of salary by two stages for a period of two years. For facility of reference, the operative part of the order of Disciplinary Authority and Appellate Authority are reproduced:- Order passed by the Disciplinary Authority:- ''''I, Therefore, concur with the findings of the enquiry officer and hold Shri G.K. Ahuja guilty of the lapses held proved against him. Keeping in view the seriousness and gravity of such proved charges, I decide to impose upon him major penalty of ''''Reduction of salary by three stages in the time scale of pay in which he is presently placed for a period of five years with further direction that he will not earn increment during the period of such reduction and shall have the effect of postponing the future increment. Further, Shri Ahuja will not be entitled to any pay and allowances except the subsistence allowance already paid/payable to him for the period he remained under suspension.'''' . . Order passed by the Appellate Authority:- . ''''In view of the foregoing, the points raised by Shri Ahuja in his appeal are devoid of merit. However, taking an overall view of the case, I am of the opinion that the ends of justice would be met by imposing major penalty of ''''Reduction of salary by two stages for a period of two years and he will not earn increment during the period of such reduction and this would have the effect of postponing of future increments'''' instead of major penalty of ''''Reduction of Salary by three stages in the time scale of ay in which he is presently placed for a period of five years with further directions that he will not earn increment during the period of such reduction and shall have the effect of postponing the future increment'''' imposed upon him by the Disciplinary authority. . I order accordingly and Shri Ahuja be informed.''''

5. The submission of the petitioner is that the order of the Disciplinary Authority merges into the order passed by the Appellate Authority and the order passed by the Appellate Authority as quoted above, did not uphold the direction of Disciplinary Authority that the petitioner would not be entitled to any pay or allowance except subsistence allowance. Counsel submitted that legal effect of this is that the period of suspension was liable to be counted in the qualifying service for computation of pen ion.

6. Learned counsel further submits that as per Regulation 56 of the PNB (Employees) Pension Regulations 1995, in case of doubt, resort may be had to the corresponding provisions of Central Civil Services Rules 1972. Counsel thereupon relies upon Rule 23 of CCS(Pension) Rules, 1972 as also Government of India OM No. F.11(3)-E, V(A)/76 dated 28th February, 1976 paragraph 3(b) which enjoins upon the respondent to make specific entries in the service book in case period of suspension was not to be counted for qualifying service.

7. Learned counsel for the respondent Mr. S.K. Pruthi, while opposing the

 

computation of the period of suspension as qualifying service, submits that the petitioner is not entitled to the same. He submits that Regulation 21 of PNB (Employees) Pension Regulations 1995 is absolutely clear and categorical in terms. The said regulation is reproduced for facility of reference:-

''''21. Period of Suspension Period of suspension of an employee pending enquiry shall count for qualifying service where, on conclusion of such enquiry, he has been fully exonerated or the suspension is held to be wholly unjustified, and in other cases, the period of suspension shall not count as qualifying service unless the Competent Authority passing the orders under the Service Regulations or Discipline and Appeal Regulations or Settlements governing such cases expressly declares at the time that it shall count to such extent s such authority may declare.''''

8. He submits that only in case where an employee is fully exonerated and the suspension held to be wholly unjustified and a specific order is passed that the period of suspension shall count as qualifying service, then an employee can be entitled to this benefit. It is correct that Regulation 21 is clear and equivocal in this regard. Resort to Regulation 56 and the CCS (Pension) Rules, 1972 cannot be had in the absence of any doubt in the matter. It is also the accepted position that the petition r has not been exonerated in this case. Punishment of stoppage of two increments was retained by the Appellate Authority. On considerations of equity, learned counsel has rightly submitted that respondent has given to the petitioner the benefit of notional increments. This, he submits has been done on account of clarification by the Indian Banks Association and the Tripartite agreement reached. He submits that there would be no justification for extending the said benefit of counting the period of suspension as qualifying service in the absence of exoneration and a clear order to that effect by the Appellate Authority. I find merit in this submission. It is held that petitioner is not entitled to benefit of counting period of suspension as qualifying service.

9. Petitioner has received benefits under V.R.S Scheme. Learned counsel for the petitioner submits that the petitioner vide his letter dated 31.7.2004 has given compilation of calculation of outstanding dues. He submits that payments to the petitioner were unreasonably withheld. Mr. Pruthi states that it was a case of erroneous fixation of basic pay and other allowances. The blame for it cannot be placed at the door of the petitioner. Respondent cannot take any advantage of the same.

10. It is directed that respondent would examine the compilation showing calculation of outstanding dues as given by the petitioner showing the dates on which amounts were due and the dates of disbursements. Petitioner states that computation of the claims is given in his letter of 31st July, 2004. Respondent to seek clarification, if any, within two weeks. The respondent shall pay interest @ 12% p.a for the period for which the amounts found admissible were wrongfully withheld, within eight weeks from today. . Writ petition stands disposed of in the above terms.

 