
(2013) 09 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 562 of 2013

M.S. Rana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 8 ADJ 689 : (2014) 1 UPLBEC 790

Hon'ble Judges : Rajes Kumar, J;Manoj Misra, J

Bench : Division Bench

Advocate : Ishan Shishu, S.C., Shelly Saxena and Vipin Sinha, for the Respondent

Judgement

Manoj Misra, J.—We have heard Sri M.S. Rana (the petitioner in person) and Ms. Shaili Saxena for the respondents and perused the record. The brief facts of the case are that the petitioner was an Officer MMG/Scale S-3 in Bank of Baroda. He was inflicted with punishment of removal from service by order dated 5.8.2004, which was affirmed by the Appellate Authority, vide order dated 15.2.2005, against which the petitioner filed writ petition No. 30055 of 2005. The said writ petition was partly allowed, vide order dated 30.9.2010, to the extent that the removal order dated 5.8.2004 and the appellate order dated 15.2.2005 were set aside and the matter was remitted to the Disciplinary Authority to pass a fresh punishment order in accordance with the observations made in the judgment.

2. While allowing the writ petition No. 30055 of 2005, this Court observed that the Disciplinary Authority was not justified by taking into consideration allegations 1(d) and 1(e), made in the statement of allegations, as proved while imposing the punishment. It also observed that looking to the nature of the charges, which have been proved, the petitioner deserves a lesser punishment other than the punishment awarded to him.

3. On the date when the judgment was delivered in Writ Petition No. 30055 of 2005, the petitioner had already attained the age of superannuation which,

according to the petitioner, was attained on 30.9.2009. Being conscious of the said position, the Court relying on the provisions of Regulations 20(3)(iii) of Bank of Baroda (Officers' Service) Regulations, 1979 observed that if a bank officer attains the age of superannuation during the disciplinary proceedings, the proceedings shall be continued as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

4. Pursuant to the decision of this Court dated 30.9.2010, the Disciplinary Authority re-examined the matter and by its order dated 30.12.2010, modified the penalty of removal from service to that of compulsory retirement, with a specific observation that the modified punishment would relate back to the earlier order of removal dated 5.8.2004. However, while passing the order dated 30.9.2010, the Disciplinary Authority again considered the allegations 1(d) and 1(e) as proved, even though they were found not proved by the Enquiry Officer.

5. The petitioner challenged the order of compulsory retirement dated 30.9.2010 before the Appellate Authority. The Appellate Authority, vide order dated 2.9.2011, dismissed the appeal and affirmed the compulsory retirement order dated 30.12.2010. Against the orders dated 30.12.2010 and 2.9.2011 passed by the Disciplinary Authority and the Appellate Authority respectively, the petitioner filed yet another Writ Petition No. 62743 of 2011 before this Court. The said writ petition was partly allowed, vide order dated 2.3.2012, to the extent that the orders dated 30.12.2010 and 2.9.2011 were set aside and the Disciplinary Authority was directed to pass a fresh order, in the light of the observations made in the judgment of this Court in writ petition No. 30055 of 2005, without taking into consideration the allegations 1(d) and 1(e).

6. The order dated 2.3.2012 passed in writ petition No. 62743 of 2011 attained finality and the net result, therefore, was that the Disciplinary Authority had to consider a punishment, albeit lesser than removal, for the petitioner without taking into consideration allegations 1(d) and 1(e) as mentioned in the statement of allegations.

7. Pursuant to the order of this Court dated 2.3.2012, the Disciplinary Authority, vide order dated 11.5.2012, even after excluding the allegations 1(d) and 1(e) from consideration, maintained the penalty of compulsory retirement with a specific observation that the order would relate back to the earlier order dated 5.8.2004 and would have force and effect from 5.8.2004 i.e. from the date of earlier removal order. It was also specifically observed that the period of suspension, with effect from 19.6.2002 to 5.8.2004, shall be treated as period not spent on duty. Aggrieved by the order of the Disciplinary Authority, the petitioner, yet again, preferred an appeal before the Appellate Authority, which was dismissed, vide order dated 26.11.2012.

8. Challenging the order of the Disciplinary Authority as well as the Appellate Authority, the present petition has been filed. The petitioner submitted that imposition of an order of compulsory retirement with effect from the date of

original removal order dated 5.8.2004 virtually has same consequences as there would have been in a case of removal from service, therefore, the entire exercise of passing a fresh lower punishment order was just an eyewash and is in violation of the true spirit of this Court's order dated 30.9.2010, which provided for imposition of a lesser penalty. It was further submitted that the order of compulsory retirement could not have related back to the date of the earlier order of removal i.e. 5.8.2004, particularly, in view of Regulation 20(3)(iii) of Bank of Baroda (Officers' Service) Regulations, 1979, which provided as follows:

The officers against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF.

9. The petitioner also placed reliance on certain extracts from the book of instructions circulated in the Bank (Annexure CA-4 to the counter-affidavit filed on behalf of the respondents), which enumerates implication of various penalties on terminal benefits. In that extract it has been provided as follows:

In case an officer has reached superannuation date and Regulations 20(3)(iii) of Bank of Baroda (Officers' Service) Regulations, 1979 has been invoked and punishment is imposed thereafter, there would be a very marginal effect on the terminal benefits as punishment would be imposed upon the officer as on the last date of his service.

10. Placing reliance on the aforequoted portion, the petitioner submitted that the penalty of compulsory retirement ought to have been imposed with effect from the date of superannuation i.e. 30.9.2009 and not with effect from 5.8.2004.

11. Per contra, Ms. Shaili Saxena, who appeared on behalf of the respondent-Bank, submitted that the punishment of compulsory retirement is lower than that of removal from service and since the Disciplinary Authority is the final Judge of the quantum of punishment, which is to be imposed on a delinquent officer, the punishment of compulsory retirement cannot be said to be in violation of the spirit of the order of this Court in the earlier Writ Petition No. 30055 of 2005. She further submitted that when the matter is remitted to the Disciplinary Authority to substitute a punishment, then the substituted punishment relates back to the date of the original punishment. To support her contention, she relied on a judgment of the Karnataka High Court in the case of S. Vishwanath Vs. Central Bank of India, and on a decision of the Apex Court in the case of Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, .

12. Having considered the rival submissions, what is apparent on the record is that the punishment of removal from service earlier awarded to the petitioner, on the proven charges, was found to be not justified by this Court and this Court

was of the view that the petitioner deserved a lesser punishment on the charges proved against him. The order of this Court in the earlier writ petition has attained finality. In such circumstances, the crucial question that arises for our consideration is as to whether in the facts and circumstances of the case the punishment of compulsory retirement awarded to the petitioner, is against the spirit of the direction given by this Court in earlier writ petition No. 30055 of 2005 or not?, And if so, to what relief the petitioner is entitled to?

13. In order to arrive at an answer to the aforesaid question, it would be useful to first examine the" allegations upon which the order of punishment has been founded. Allegation Nos. 1(a), 1(g), 1(h), 1(i) and 2, were found proved by the inquiry officer and the finding was affirmed by the disciplinary authority. These allegations are as follows:

1. He sanctioned and disbursed loans to 110 borrowers under Rice Huller Modernization Scheme during the period Sept 2001 to May 2002. During Assets Verification conducted by Bank on 21.6.2002, 24.6.2002 and 25.6.2002 in respect of -96-cases under the Scheme, the following irregularities were observed:

1(a) In -54-cases complete Assets were not found installed/created as per Annexure-1 attached to the Charge-sheet dated 6.6.2003.

1(g) Bills/receipts obtained for financed machinery in all cases are without following relevant details:

(i) Make/Brand,

(ii) Serial No. of Machine,

(iii) Warranty Clause,

(iv) Test Report of an authorised institute. For example, Term Loan a/c No. 3486 of Mr. Bhajan Lal and Term Loan A/c No. 3488 of Mr. Chandra Bhan Singh.

1(h) Full disbursement made in various loan a/cs (as per Annexure attached to Charge-sheet dated 6.6.2003) without ensuring erection and commissioning of machinery in the premises of beneficiary & without ensuring end use of loan.

1(i) Out of -110-cases disbursed under the Scheme, -24-a/cs amounting to Rs. 12.98 lacs became NPA within one year of disbursement (as per Annexure-II attached to Charge-sheet dated 6.6.2003). Out of remaining accounts, most of the accounts are likely to become NPA due to large scale improper assessment of Techno/economic viability of Project and reckless financing under the Scheme, (as per Annexure III attached to Charge-sheet dated 6.6.2003).

2. He sanctioned and disbursed various Dairy Loans without observing Bank's laid down Norms. Joint Assets Verification conducted by the Branch on 24.6.2002 and 25.6.2002 in respect of -6-Dairy loans revealed the irregularities (as per Annexure-IV attached to Charge-sheet dated 6.6.2003).

In addition to above, there was allegation No. 1(f), which was found not proved by the enquiry officer but was found proved by the disciplinary authority, and this finding was not disturbed by this Court in earlier petition. The allegation No. 1(f) was to the effect that in many cases the back-end subsidy was credited even before the payment of Bank-loan, which was against the provisions of the Scheme.

14. With regards to allegation 1(f), the Inquiry Officer found the allegation not proved for the reason that the relative vouchers were prepared by the then Manager (Credit) posted at the branch and further, the amount of G/L subsidy could be reversed even at that point of time. The Disciplinary Authority, however, found the allegation 1(f) proved, inasmuch as, it was the duty of the petitioner, as a Senior Manager of the branch, to have full control of branch operations and to have managed its affairs effectively and not to have allowed unbridled freedom to his subordinate in the branch. This, therefore, indicates that the allegation No. 1(f) even though held proved against the petitioner was attributable to his lack of supervisory skill as a Senior Manager of the branch.

15. From the aforesaid proven allegations, the Disciplinary Authority inferred that the following charges were proved against the petitioner:

- i. He violated and flouted Rules, Regulations and Procedure of the Bank.
- ii. He committed acts of negligence which facilitated gross misutilization of Bank's funds.
- iii. His acts of reckless finance are likely to cause financial loss to the Bank.

16. A careful perusal of the record would reveal that neither the proven allegations, nor the charges inferable therefrom, imputed any dishonest motive or ill motive to the petitioner in the various acts or omissions attributed to him. The proven allegations also do not disclose that by his aforesaid acts, the petitioner had favoured any particular customer of the Bank or had himself gained, in any manner. In the above background, this Court, in its earlier judgment and order dated 30.9.2010, in Writ Petition No. 30055 of 2005, observed as follows:

However, looking to the nature of the charges, which have been found to be proved, we are of the view that the petitioner deserves lesser punishment which has been awarded by order dated 5.8.2004.

17. Although the disciplinary authority pursuant to the order of remand has imposed a punishment, which is technically lower than the earlier punishment of removal but whether such punishment is in true compliance of the spirit of this Court's earlier order, has to be adjudged in the context of the facts of this case.

18. At this stage, it would be useful to examine certain observations made by the Disciplinary Authority, in its order dated 11.5.2012, with respect to the allegations that were found proved against the petitioner.

19. In respect to allegation No. 1(a), the Disciplinary Authority, in its order dated 11.5.2012, at page 130 of the paper book, noted the contentions of the Presenting Officer, which were to the effect that from the findings of the Joint Inspection Report carried out by ZIC Inspector and Mr. M.A. Khan during 21.6.2003 to 24.6.2003, it appeared that Mr. M.A. Khan had fabricated the reports without visiting the sites of the borrowers, and post-sanction Inspection Reports were predated even before the date of disbursement in few cases. On that basis, the Presenting Officer opined that Mr. M.A. Khan was probably preparing Pre/Post-Sanction Inspection Report without visiting the sites of the borrowers, as mentioned in Annexure 1 attached to the charge-sheet. The Presenting Officer also mentioned that due to lack of supervision and control, 54 borrowers did not create the assets out of the loans availed by them from the Branch and, therefore, the CSO (the petitioner herein) was negligent in discharging his prime job of supervision of advance portfolio. From the order, it further transpires that the case of the CSO (the petitioner herein) was that Mr. M.A. Khan was assigned the duty of Credit Department and carrying out Pre/Post-Sanction Inspection was one of the activities of the department. The Disciplinary Authority, however, brushed aside the explanation of the CSO (the petitioner) by observing that even if it is presumed that the irregularities were created by Credit Officer, yet CSO (the petitioner herein) failed to guide, check and monitor the Manager (Credit) to perform as per the guidelines so as to avoid misuse of bank's fund in the 54 cases.

20. From the observations, noticed above, we are of the view that the allegation No. 1 (a), which was found proved against the petitioner, primarily related to his supervisory function and the erroneous follow up reports with regards to the advances were not directly attributable to the petitioner and, in fact, they related to the Manager (Credit), who was Credit Officer of the Branch concerned. And, in any case, there was no allegation that the petitioner was in collusion with the Manager (Credit).

21. As far as the allegation 1(g) is concerned, the same related to advance of Rs. 50,000/- to borrowers Mr. Bhajan Lal and Mr. Chandra Bhan. The allegation was that the invoices against which the machinery was purchased did not contain mark/brand of machinery supplied, warranty clause, test report of any authorised institute. This charge was sought to be explained by the CSO (the petitioner herein) by claiming that the machinery was purchased from M/s. S.D. Engineering Works, which was authorised supplier of Manglam, DMR and Amarshakti brand machines and that product of the company had been tested and found satisfactory by M/s. Har Court Butler Technology Institute, Kanpur and such certificates were not issued in all individual cases. Even if this charge is taken as proved, we are of the view that this allegation is not such, upon which, a very severe penalty can be imposed.

22. So far as the allegation 1(h) is concerned, it primarily related to the disbursement of payment to the supplier of the goods, without ensuring erection

and commissioning of machinery at the borrowers end, particularly, when the guidelines required disbursement of payment to the supplier after installation of machinery. "Here also, the stand of the charge-sheeted officer (the petitioner herein) was that Mr. M.A. Khan, the Manager (Credit) was assigned the duties of Post-Sanction Inspection for ensuring end-use of loan for which purpose he was being deputed regularly and at no point of time, any misappropriation of funds or misuse of loan was appraised to, CSO (the petitioner herein). While discussing the said allegation, the Enquiry Officer as well as the Disciplinary Authority was of the view that the CSO (the petitioner herein) cannot have an excuse as the necessary guidelines were not followed, which resulted in misuse of funds.

23. Having considered the material, we are of the view that the allegation No. 1(h) essentially related to Post-Sanction follow-up, therefore, considering the fact that the petitioner was a Senior Branch Manager at the Branch concerned, with a Manager (Credit) being posted there, the lapses on the part of the petitioner might reflect on his poor supervising capability. However, here again, there is no allegation that by his action, the petitioner intentionally benefitted any person or dishonestly made any gain for himself or was in collusion with the Manager (Credit) posted in that branch, who was assigned duties of post sanction follow up.

24. The allegation I(i), which has also been found proved against the petitioner is to the effect that out of 110 cases sanctioned/disbursed under the Scheme, 24 accounts amounting to Rs. 12.98 lacs became NPA within one year of disbursement and, out of remaining accounts, most of the accounts are likely to become NPA due to large scale improper assessment of Techno/economic viability of Project and reckless financing under the Scheme. The defence of the CSO (the petitioner herein) was to the effect that it was on account of poor and lack of follow up at the Branch as also severe drought condition in the area which resulted in poor recovery in those accounts and it was also pleaded that the borrowers have sufficient means to pay off the advances through the assets financed. The Enquiry Officer, however, concluded that as selection of proper borrower, erection and commissioning of machinery and end-use of bank's funds have not been ensured, recovery in such accounts was proving difficult and hence the allegation I(i) stands proved.

25. We are of the view that the allegation I(i), essentially, relates to the consequences of the other allegations, which we have already discussed. Even otherwise, an account may turn NPA for various reasons like down turn in the economy, etc., which may not be attributable to any misconduct on the part of loan sanction authorities. In any case, this allegation is not to the effect that fictitious borrowers were given credit or fictitious assets were taken as security, with any ulterior motive. We are, therefore, of the view that this allegation per se may not be able to sustain penalty of termination of service, particularly, when the misconduct is in the supervisory capacity.

26. The allegation No. 2 relates to sanctioning and disbursement of various Dairy

Loans without observing bank's laid norms. Although, the said charge has been found proved but it is not to the extent that the CSO (the petitioner) had no jurisdiction for sanctioning/disbursing of such loans.

27. Taking a conspectus of the allegations that have been found proved against the petitioner, the disciplinary authority in paragraph (xviii) of the order dated 11.5.2012 sums up the proven misconduct of the petitioner in the following words:

Having carefully perused the charge-sheet, finding of Inquiring Authority, Submission/Representation of Mr. Rana on findings of inquiring Authority, I find that while posted at Rampur branch, Mr. Rana has committed serious lapses and grossly violated the established procedure putting Bank's interest in jeopardy. He did not effectively monitor the affairs of the branch and his actions show his lack of control over the day to day business of branch. His contention that all the acts were committed by his Manager (Credit) shows his inefficiency as Branch Head. Infact, the gravity of the allegations and charges proved resulted in loss to the bank and renders the Officer untrustworthy of any responsibility in the Bank.

28. Having considered the entire material on record, we find that the following allegations, proven or not proven, against the petitioner are conspicuous by their absence:

- (i) a dishonest motive on the part of the CSO (the petitioner) either to cause unlawful gain to oneself or to someone; and
- (ii) lack of jurisdiction in making advances.

29. Further, from the concluding paragraph (xviii) of the order dated 11.5.2012 passed by the Disciplinary Authority what transpires is that there is a finding to the effect that the petitioner lacked capability to effectively monitor the affairs of the branch as its Head and for that reason he was found to be untrustworthy of holding any responsibility in the Bank.

30. In such circumstances, the imposition of penalty terminating his service, by way of compulsory retirement, was unduly harsh and grossly disproportionate to the proven misconduct. More so, this Court, in the first round of litigation, while partly allowing Writ Petition No. 30055 of 2005, had observed that looking to the nature of the charges, which have been found proved, the petitioner deserved lesser punishment other than the punishment of removal awarded by order dated 5.8.2004. Although, technically speaking a punishment of compulsory retirement is lower than removal, which was earlier awarded to the petitioner. But whether the punishment of compulsory retirement, in the manner in which it has been awarded, works out to be lower than removal needs assessment. For this purpose, it would be useful to refer to Annexure 4 to the counter-affidavit filed on behalf of the respondent-bank wherein implications of various penalties on terminal benefits has been detailed. The implication of the penalty of compulsory retirement on terminal benefits have been stated as follows:

- (1) No disqualification for future employment;
- (2) No impact on PF;
- (3) Leave, encashment/ARB not payable;
- (4) Gratuity payable only if permissible as per rules; and
- (5) No pension payable. However, Compulsory Retirement Pension may be paid under Regulation 33 of the Bank of Baroda (E) Pension Regulations, 1995.

Whereas, the implications of the penalty of removal from service are stated as follows:

- (1) No disqualification for future employment;
- (2) No impact on PF;
- (3) Leave, encashment/ARB not payable;
- (4) Gratuity payable only if permissible as per rules; and
- (5) No pension payable. However, if the case is deserving of special consideration, Compassionate Allowance may be sanctioned under Regulation 31 of the Bank of Baroda (E) Pension Regulations, 1995.

31. A comparison of the implications of the two penalties on the terminal benefits payable to the incumbent would go to show that except in the case of payment of pension, there would be no difference. Whereas in the instant case, from the table given in paragraph 3 of the counter-affidavit, it appears as follows:

- (1) the gratuity payable to the petitioner was forfeited in terms of Clause 2 of Sub Rule 1 of Rule 8 of Payment of Gratuity (Central) Rules, 1972 as the petitioner was imposed the punishment of compulsory retirement;
- (2) in terms of Rule 18 of the Book of Instructions, the payment of Provident Fund to the extent of employees contribution alone was payable to the petitioner whereas the employer contribution stood forfeited on account of his having been imposed a penalty of compulsory retirement and consequently, the petitioner was paid just a sum of Rs. 5,76,812/- vide Cheque No. 865768 dated 30th January, 2006 as employee's contribution towards Provident Fund;
- (3) no leave encashment was payable as per Vol. 13 Page 336 of the Book of Instructions on account of imposition of punishment of compulsory retirement on the petitioner;
- (4) no additional retirement benefits were payable to the petitioner as per Vol. 12 Page 526 of the Book of Instructions consequent to imposition of punishment of compulsory retirement; and
- (5) no pension was payable to the petitioner as he had never opted for pension earlier and that he opted for the pension for the first time in the year 2010 under

the new Settlement dated 27.4.2010 which provided that no pension was payable to an employee who cease to be in service on account of punishment imposed upon him.

32. Thus, from above, it is clear that although the petitioner has been awarded a penalty lower than the penalty of removal but, in sum and substance, it is completely an eye-wash and does not provide any significant benefit to the petitioner. We are, therefore, of the considered view that the imposition of punishment of compulsory retirement to the petitioner is against the true spirit of the order dated 30.9.2010 passed by this Court in Writ Petition No. 30055 of 2005, which had attained finality between the parties. Moreover it is also unduly harsh in "the light of the proven charges and, as such, cannot be countenanced.

33. Now, the question that arise for our consideration is as to what relief should be provided to the petitioner. Ordinarily, when an order of punishment is set aside by a superior Court by exercising its power of judicial review, the matter is to be remitted back to the Disciplinary Authority to enable it to pass a fresh order. However, in exceptional circumstances, the superior Court exercising its power of judicial review can, by itself, substitute the punishment looking to the facts and circumstances of the case.

34. In the instant case, we find that the petitioner was earlier inflicted with punishment of removal from service, which was based, inter alia, on allegations 1(d) and 1(e) that were not found proved by the Enquiry Officer. Those allegations were, therefore, not available to the Disciplinary Authority while passing the order of punishment. In such circumstances, the punishment of removal from service was set aside by this Court with clear observation that the charges proved against the petitioner warranted a lesser punishment and the matter was thus remitted back to the Disciplinary Authority to consider the question of punishment afresh in the light of the observations made in the order of this Court. The Disciplinary Authority instead of considering the order of this Court in the right perspective, again took into consideration allegations 1(d) and 1(e) that were not required to be considered and passed a fresh order thereby compulsorily retiring the petitioner from service with effect from the date of the earlier order. The appellate authority also upheld the order without addressing itself to the mistake committed by the disciplinary authority. Accordingly, the order of compulsory retirement was successfully challenged in Writ Petition No. 62743 of 2011 and this Court took the view that the Disciplinary Authority fell in error by treating those allegations as proved, when they were to be left out of its consideration under the earlier order of this Court in Writ Petition No. 30055 of 2005 and, accordingly, the order of compulsory retirement was set aside and the matter was remitted back to the Disciplinary Authority to pass a fresh order. In these several bouts of litigation, the petitioner stood retired on 30.9.2009 and, now again, the Disciplinary Authority has passed the order of compulsory retirement, which has been affirmed by the appellate authority. Looking to the history of litigation, and to obviate the hardship, we are of the view that instead

of remitting the matter back to the Disciplinary Authority, the question of punishment to be imposed on the petitioner should be considered by us rather than by the Bank authorities, who, we feel, have adopted a stubborn approach towards the petitioner.

35. Being a bank employee, there is no doubt that the petitioner was required to perform his functions as a senior manager with utmost caution, care and responsibility. A conspectus of the charges found proved against the petitioner reflect his inability to properly discharge the supervisory functions, as a branch head. The defence taken by the petitioner to the charges levelled against him, as found out from the order of the disciplinary authority, reveals that he has attributed the lapses to the inept performance of the Manager (Credit) posted in his branch who, according to the petitioner, was required to carry out pre and post sanction follow up. The finding is to the effect that the petitioner as the branch head could not have shrugged off his responsibility. In such circumstances, we find that the ends of justice would be served if the position of the petitioner was reduced instead of terminating his service. In such a situation we are of the view that the punishment of reduction to a grade lower than what the petitioner was holding at the time he was punished, be imposed on him.

36. Now, the question that would arise for our consideration is as to from which date the substituted punishment is to operate. In this regard the contention of the petitioner is that since the petitioner has retired on 30.9.2009, in view of Regulation 20(3)(iii) of Bank of Baroda (Officers' Service) Regulations, 1979 as also its implications, as referred to in the Book of Instructions, the punishment should be imposed on the last date of his service and not with effect from the date of the earlier order of removal. Whereas, the contention of the respondents' counsel is that the substituted punishment operates with effect from the date of earlier order of punishment.

37. Having considered the rival submissions in this regard, we are of the view that the implications of Regulation 20(3)(iii) as mentioned in the Book of Instructions applies to a situation where the disciplinary inquiry is pending on the date of superannuation and not to a case where the disciplinary enquiry has already resulted in imposition of punishment. In a case where the original punishment is set aside, only to be substituted by a new punishment, pursuant to an order of judicial review, then ordinarily such substituted punishment would relate back to the date of original punishment. This view that we are taking finds support from the decisions cited by the learned counsel for the petitioner i.e. *S. Vishwanath Vs. Central Bank of India*, ; and *Chairman-cum-Managing Director, Coal India Limited and others v. Ananta Sana and others*, (2011(4) ESC 351 (SC)).

38. In the instant case, on the date the petitioner had attained superannuation there was no departmental proceeding pending against him. The proceeding had resulted in imposition of punishment. This Court had only set aside the order of punishment of removal with a direction to impose a fresh punishment in the light

of the observations made in the order. In such circumstances, the substituted punishment would operate from the date of the earlier order of removal i.e. 5.8.2004.

39. Now, the question that would arise for our consideration is as to whether the petitioner is entitled to the back-wages from the date his services were terminated up to the date of his superannuation. For the said purpose, it would be useful to refer to the decision of the Apex Court in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , where, in paragraph Nos. 19 to 21, it was observed as follows:

19. But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the Court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the Court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The Court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a Court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed {in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of mis-conduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the

employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

20. But there are two exceptions. The first is where the Court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all.

40. In view of the law noticed hereinabove, while considering the question of payment of back-wages in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

41. In view of the discussion made above, we find that the punishment of compulsory retirement imposed on the petitioner was far too harsh, particularly, when this Court had earlier remanded the matter to impose a lesser punishment. In the facts and circumstances of the case, and for the reasons already detailed above, we substitute the punishment of compulsory retirement by imposing on the petitioner the punishment of reduction to a grade lower than what the petitioner was holding at the time when he was punished i.e. 5.8.2004, and to that extent the impugned orders dated 11.5.2012 and 26.11.2012 stand modified. However, in view of the law laid down by the Apex Court, which has

been noticed above, it would not be proper for us to grant back-wages to the petitioner for the period which he has not worked. But, as the petitioner was deprived of the employer's contribution towards the Provident Fund, the payment of gratuity, the leave encashment and the right to opt for pension only because his services were terminated, therefore, to serve the ends of justice we direct that the petitioner be provided the benefit of continuity of service not for the payment of back-wages for the period that he did not serve the organization, but for the purpose of retirement benefits like employer's contribution towards provident fund, payment of gratuity, leave encashment, with the right to opt for pension, etc. For the aforesaid purpose the petitioner would be treated to be in service on a grade lower than what he held, with effect from the date he was compulsorily retired i.e. 5.8.2004 up to the date of his superannuation. In addition to the above, we also consider it appropriate that petitioner be paid lump sum compensation, by way of costs, for having been forced to approach this Court on at least three occasions, which we quantify at Rs. 1,50,000/-. The entire exercise of payment of retrial dues, as indicated above, including the compensation quantified by us will be carried out within a period of two months from the date of production of certified copy of this order before the respondent No. 3. The writ petition stands allowed to the extent indicated above. It is made clear that we have not entered into the merits of the claim of medical bills, TE bills raised by the petitioner as we find that those claims would involve investigation into facts and we, therefore, leave it open for the petitioner to agitate the same before a Civil Court or a suitable forum. We may further observe that we have not adjudicated on the right of the respondent-bank to recover from the petitioner any pecuniary loss caused to the Bank by his conduct, which may otherwise be recoverable from his retrial dues in accordance with the law, rules, etc. applicable.