
(1999) 10 DEL CK 0052
In the Delhi High Court
Case No : C.W. NO. 1793 of 1997

R.N. Tikku

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Citation : (1999) 6 AD 474 : (1999) 82 DLT 633 : (1999) 51 DRJ 562

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Mr. J.K. Nayyar and Mr. R.R. Rai, for the Appellant; Mr. Raj Birbal Sr. Advocate, Ms. Meera Mathur and Mr. R.S. Mathur, for the Respondent

Judgement

Usha Mehra, J.—Petitioner has assailed by way of this writ petition, Regulation No. 15 of Punjab National Bank (Employees) Pension Regulation 1995 (hereinafter called the Regulations, 1995), pursuance to which he has been deprived of the benefit of counting the period of deputation spent in the Bank.

2. In order to appreciate the challenge the facts relevant and undisputed are that the petitioner was working as Research Officer in the Banking Division of the Department of Economic Affairs, Ministry of Finance, Government of India. On 26th June, 1979 he was transferred to the respondent Bank on terms of deputation for a period of two years. However, before the expiry of his deputation period an advertisement was issued by the Banking Service Recruitment Board, Delhi (in short the BSRB) for the post of Manager. The advertisement appeared in the newspaper "Times of India" dated 5th September, 1980. The date for interview for the said post was fixed in the month of April, 1981. In response to the said advertisement petitioner applied. He was selected by the BSRB, Delhi and accordingly offered appointment on permanent basis in the bank to the post of Manager on 25th June, 1981 subject to his severing lien with the Government of India and seeking clearance and approval of the Government for joining that post. It was necessary before he could be permanently absorbed in the service of the Bank. Petitioner accepted these

conditions. Accordingly, the wrote to the Government of India asking for the clearance for permanent absorption of the petitioner in the bank on the basis of his selection by the BSRB, Delhi. Petitioner was appointed on substantive basis as Manager (Corporate Planning) with the Bank as a fresh recruit on probation for a period of one year, on 25th June, 1981. He successfully completed his probationary period and, Therefore, got confirmed in the said post on 25th June, 1982. Petitioner retired from the service of the Bank on 31st March, 1990 after attaining the age of superannuation. After his retirement the bank circulated Pensionary Benefit Scheme vide circular dated June, 1994 pursuance to which petitioner submitted his option for pensionary benefits on 26th July, 1994. In 1995 the respondent Bank formulated the Regulations, 1995. On the basis of the Regulations, 1995 case of the petitioner was processed. He completed all the formalities stipulated therein, but his case for pensionary benefit was rejected by the bank vide litter dated 22nd June, 1996, inter alia, on the ground that he did not fulfill qualifying minimum length of service of 10 years in the Bank as per the terms of Regulation No. 15.

3. Petitioner assailed this order primarily on the ground that Regulation 15 is arbitrary, discriminatory, illegal and against the principles of natural justice. According to him appointment on "permanent basis", the expression used in the Regulation No. 15, would mean and include the period spent by the petitioner on deputation with the bank. Any other interpretation to this expression would make the Regulation redundant.

4. Thus the short point involved which requires determination is the validity of Regulation 15. In order to answer the same let us have quick glance to the said Regulation as well as Regulation No. 14 which deal with the period required for qualifying service Regulations 14 & 15 being relevant for our purpose are reproduced as under :-

"14. Qualifying Service:

Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

15. Commencement of qualifying service:

Subject to the provisions contained in these regulations qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis. (underlining is ours)

5. Admittedly, the petitioner was absorbed on permanent basis in the bank on 25th June, 1981. It is also a fact that as per Government of India's instruction as applicable to the respondent Bank deputation period spent in the Bank would be counted for the purposes of gratuity and provident fund as well as of seniority. Relying on these instructions counsel for the petitioner contended that if period

spent on deputation can be counted towards seniority and for other benefits like provident fund and gratuity then there is no reason nor any justification for not counting the said period for the purpose of retiral benefits. The word "permanent basis" used in Regulation No. 15 does not mean to exclude the period spent in the bank on deputation. Nor would it mean the period spent as deputationist to be non-est. He was a permanent employee of the Government. He was deputed to work in the Bank by the government by way of transfer hence the period spent as deputationist on transfer cannot be but service rendered to the Bank on permanent basis. Moreover, before the expiry of deputation period he got absorbed in the Bank hence the period spent as deputationist followed by absorption has to be counted for purposes of qualifying service. To support his case he placed reliance on the decision of Allahabad High Court in the case of Shri Kuldeep Singh Rajput Vs. Punjab National Bank, Civil Writ No. 15766/86 decided on 19th February, 1988. The facts of that case were that one Mr. K.K. Tandon came to the bank on deputation. He was subsequently absorbed. His deputation period was counted by the Bank towards seniority. Mr. Kuldeep Singh Rajput, Regional Manager of the bank assailed the seniority accorded to Mr. K.K. Tandon another officer of the Reserve Bank of India who came to the bank on deputation w.e.f. 1st April, 1981. Initially Mr. K.K. Tandon was placed on deputation for one year in Scale-IV in the bank. Period of his deputation was extended from time to time and ultimately Mr. K.K. Tandon was absorbed in the bank on the same post in the same Scale on 8th May, 1985. Mr. Tandon's seniority was determined w.e.f. 1st April, 1981 the date on which he came on deputation to the bank. Fixation of his seniority w.e.f. 1st April, 1981 which was protested by Mr. Kuldeep Singh Rajput. Grievance of Kuldeep Singh Rajput was that appointment of Mr. K.K. Tandon on deputation was invalid as the bank had no power to appoint him on deputation nor could subsequently absorb him in Scale-IV in the bank. Moreover, the period spent on deputation from 1st April, 1981 to 7th May, 1985 could not be counted for determining the seniority. Negating these arguments, the Allahabad High Court observed that as per the Regulations, 1979 framed by the bank, the bank was empowered to call for the people on deputation and subsequently absorb them. Therefore, appointment of Mr. K.K. Tandon on deputation and subsequent absorption was as per the regulations, 1979 of the bank. So far as according seniority on the basis of counting the deputation period, the Allahabad High Court while rejecting the argument of Mr. Rajput relied on the letter dated 17th February, 1986 written by the General Manager Administration to the Joint Secretary, Ministry of Finance, Department of Economic Affairs, Banking Division, specifically intimating to the Government that K.K. Tandon was being given notional seniority in management grade Scale-IV with effect from the date he came on deputation to the bank i.e. 1st April, 1981. This the bank did as per the government of India's O.M. No. 2(57)/68-BPE (GM) dated 19th November, 1969. The O.M. dated 19th November, 1969 permitted the counting of seniority of deputationist by counting the period spent on deputation with the Bank and also indicated as to how the provident fund of the deputationist who opted for absorption would be dealt with. That O.M. dated

19th November,1969 provided that in deciding the seniority of deputationists vis-a-vis company employees in a particular grade, the important consideration will, no doubt, have to be the responsibilities that are being discharged by the deputationists in the appointment held in the Public Enterprises and the total period for which such responsibilities are being discharged. As regards the provident fund, whether Government could allow transfer of provident fund of a government servant to the Public Enterprises, it was observed that this could be made entirely optional to the officer. Since the Government felt that these issues would arise almost in every public enterprise the government laid down the principles which were culled out from O.M. dated 19th November,1969 as under :-

(i) Seniority- The seniority of officers opting for service in an enterprise should be fixed in a particular grade with effect from the date of their original deputation to that grade and not from the date of exercising their option, regardless of the terms offered to them.

(ii) Provident Fund Account -The amount of subscriptions, together with interest thereon, standing in the Provident Fund account of a Government Officer opting for service under an enterprise may, if he so desires, be transferred to his new Provident Fund account under the enterprise provided the concerned enterprises also agrees to such a transfer. If, however, the concerned enterprise does not operate a Provident Fund, the amount in question should be refunded to the subscriber. An officer covered by a government Contributory Provident Fund will also be allowed if he so desires to carry forward the corpus of the amount, including Government contributions to his new Provident Fund account under the enterprise. Once such a transfer of Provident Fund balance has taken place, the officer will be governed by the "Provident Fund Rules of the concerned enterprise and not by the Provident Fund Rules of the Government". Insofar as officers governed by the G.P.F. (CS) Rules,1960 or G.P.F. Rules (India) 1962 are concerned the orders contained in the preceding sub-paragraphs issued in partial relaxation of the provisions of Explanation -III below Rule 31 of the former mentioned Rules and Explanation III below Rule 33 of the latter mentioned Rules.

6. These instructions were issued by the Government in order to ensure that the seniority of deputationists should be determined in the manner prescribed above. In view of these specific instructions which had been accepted by the Bank, the Court held that the seniority of Mr. K.K. Tandon w.e.f. 1st April,1981 was rightly accorded. That there was nothing illegal about it. We are afraid the observation of Allahabad High Court as quoted above do not help the petitioner in any manner. His case is distinguishable from that of Kuldeep Singh Rajput (supra). In the above case the Regulations governing the service conditions provided the counting of deputation period towards seniority. Even otherwise in the case of Kuldeep Singh Rajput (supra) Mr. K.K. Tandon, who came on deputation, was subsequently absorbed on the same post in the same scale. But that is not the case in hand. The petitioner herein was not absorbed on the same post nor in the same grade on which he came on deputation. He had in fact severed his relation

with his parent department when he applied afresh for higher post in response to the advertisement dated 5th September, 1980. He was appointed as a fresh recruit with the bank on probation for a period of one year. Petitioner, Therefore, cannot be allowed to take any advantage of the Office Memorandum dated 19th November, 1969, nor has he been able to show us any rule, Regulation or circular issued by the Bank permitting counting of deputation period a qualifying period for pensionary benefits.

7. Mr. J.K. Nayyar, counsel for the petitioner unconvincingly tried to draw help from the decision of Supreme Court in the case of K. Madhavan and Another Vs. Union of India (UOI) and Others, . That was a case of a deputationist getting permanently absorbed in the CBI on the same post. Mr. K. Madhavan was appointed on transfer. Under the rules his deputation was treated as a transfer from one Government Department to another. It was in this background the Apex Court observed that it would be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same and/or equivalent post in another Government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer could not wipe out his length of service in the post from which he had been transferred. This principle was to apply only where persons from different sources were provided to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. These observations of the Supreme Court were made in the peculiar facts of that case. These observations in no way help or strengthen the case of the petitioner. Even if it is presumed that petitioner came on deputation to the respondent bank by way of transfer, but he thereafter was not absorbed against the same post. Hence his period spent in the bank as deputationist could not be counted a qualifying period for pensionary benefits. This we say for two reasons firstly his absorption in the Manager scale was not on the same post on which he came on deputation. His deputation came to an end the day he applied in response to the advertisement dated 5th September, 1980 and was selected and appointed afresh with the Bank to the post of Manager (Corporate Planning). This post carried higher scale than the one on which he came on deputation. Therefore, neither the decision of K. Madhavan (supra) nor of Kuldip Singh Rajput (supra) are applicable to the facts of this case.

8. As per Regulation No. 14, the petitioner in order to be eligible for pensionary benefit had to have ten years qualifying service in the bank. Regulation No. 15 further qualify as to what this qualifying service would mean. It says only that service in the bank which had been spent on a "permanent basis" could be counted towards qualifying service. Thus before an employee could be held entitled to pensionary benefit he has to have ten years on the post in the bank which he held on a permanent basis. Petitioner was admittedly appointed in the bank on permanent basis on 25th June, 1981. Therefore, he could not claim

pensionary benefit from the bank. He Therefore, as per Government of India's O.M. rightly availed the retiral benefits as admissible to him in terms of the rule applicable to his case from his previous employer i.e. Government of India till the date he was absorbed in the bank on permanent basis i.e. from 25th June,1981. During the course of arguments Mr. J.K. Nayyar tried to urge that petitioner is prepared to surrender the pro-rata pensionary benefit already received by him from the Government of India from 26th June, 1979 till 24th June, 1981. This offer now made, to our mind, cannot help the petitioner. The same is accordingly noted to be rejected. Petitioner did not disclose the fact of having already received pro-rate pensionary benefits from the Government till the date he got absorbed in the bank. He himself admitted vide History Sheet. Form of Declaration that he was appointed in the bank on permanent basis on 25th June,1981. This shows petitioner understood it clearly that his date of joining on permanent basis with the Bank was 25th June,1981. That is the reason relying on the Government O.M. he claimed the retiral benefits on pro-rata basis from the Government.

9. That the Regulation No.14 which prescribe the minimum qualifying service and Regulation No.15 which stipulate the condition as to from which date qualifying period would be counted cannot be called arbitrary or discriminatory. Prescribing of minimum qualifying service has been upheld by the Courts in umpteen number of cases. Similarly imposition of the stipulation in Regulation No.15 is in the larger interest for the benefit of the bank employees. Such a condition has reasonable nexus with object laid down in the Regulation. This has to be so in order to make the employees aware that they would get the pensionary benefit only after rendering service in the bank on permanent basis. There is nothing arbitrary about it. such a Regulation does not injure or violate Article 14 of the Constitution of India. Regulation 1995 was framed by the bank pursuant to the power vested in it u/s 19 of the Act,1970.

10. Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970 empowers the Board of Directors of the bank after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, to make regulations not inconsistent with the provisions of the Act or any scheme made there under to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of the Act. In pursuance to the powers conferred u/s 19 of the Act, the PNB (Employees) Pension Regulations,1995 were framed. Therefore, Regulation 1995 cannot be called illegal. Nor the counsel for the petitioner has been able to point out any inconsistency of Regulation No. 15 with any provisions of the Act or Scheme made thereunder. These regulations being statutory, having force of law and being not inconsistent cannot be dubbed as arbitrary, discriminatory, illegal nor could infringe any right of the petitioner much less the principles of natural justice.

11. For the reasons stated above, even though we have full sympathy with the

petitioner but in view of provisions as contained in the Regulation 1995 governing the service conditions of employees of the bank no relief can be granted to the petitioner. The petition is accordingly dismissed but with no order as to cost.