

(2003) 04 JH CK 0006
In the Jharkhand High Court
Case No : CWJC No. 3605 of 1993 (R)

U.S. Pandey

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Central Bank of India (Officers) Service Regulations, 1979 — Regulation 20(3)

Citation : (2003) 4 JCR 337

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; M.K. Laik, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—In this Writ Application, the petitioner prays for quashing the order/letter dated 20.10.1993 issued by the respondent No. 3, as contained at Annexure-5, whereby and whereunder, while referring to the pending charge-sheets dated 19.2.1993, Supplementary charge-sheet dated 1.01.1993 and also the charge-sheet dated 14.6.1993, the petitioner was informed that although he would be superannuating on and from 31.10.1993, yet, in terms of Regulation 20(3)(iii) of the Central Bank of India Officers' Service Regulation, 1979, the disciplinary proceedings would continue against him in the same manner as if he was in the service of the Bank until the proceedings were concluded and final orders passed. In other words, he would be deemed to be continuing in service only for purposes of the disciplinary proceedings until they came to a conclusion with the passing of final orders. The other portion of the order/letter assigned reasons for issuance of the same to the effect that the disciplinary proceedings referred to therein could not be completed before the date of superannuation and therefore it had to continue but such continuance would not entitle the petitioner to receive any pay and/ or allowance after the date of superannuation and that he would also not be entitled to payment of retiral dues until completion of the proceedings, save and except his own contribution to the Provident Fund. The

petitioner further prays for issuance of a writ of mandamus commanding upon the respondents to pay to the petitioner all retiral dues treating the departmental proceedings to be closed on and from the date of superannuation.

2. The short facts which are necessary to be taken note of for purposes of adjudication of this case, are that on 11.3.1988 (as gathered from Annexure-7 at page 50 of the Writ Application), a Circular bearing number CO:88:113 was issued by the Central Bank of India informing inter alia that on account of the striking down of Regulation 20 of the Central Bank of India Officers' Service Regulation, 1979 (hereinafter referred to for the sake of brevity as the "1979 Regulations") by the Hon'ble Supreme Court of India, the said Regulation was kept in abeyance and an alternative regulation was under consideration by the Government. Mr. Saurav Arun, learned counsel for the petitioner has strenuously argued and submitted that on account of the fact that the Regulation was kept in abeyance and also in view of the fact that on the date of issuance of the impugned order, the same remained in abeyance, therefore the respondents could not have invoked the provisions of Regulation 20(3)(iii). This issue will be dealt with later.

3. Now coming back of facts, it is to be taken note of that on 19.2.1993, a charge-sheet was issued which was followed by a supplementary charge-sheet dated 1.6.1993. Thereafter on 14.6.1993, by Annexure-1 a third charge-sheet was issued in relation to 5 (five) charges.

Charge No. 1 was that the petitioner had not complied with the terms of sanction in relation to creation of equitable mortgage of property belonging to one Soney Lal, Partner of M/s. Vastralaya before disbursement of Cash Credit Limit of Rs. 2,00,000/- (Rupees two lakhs) as was stipulated by the Regional Office, Gaya. Without complying, the petitioner disbursed loan in violation of the procedure for disbursement.

Charge No. 2 was that the petitioner had forged the signature of the Chief Cashier of Buxar Branch on the Financial Report prepared in respect of Soney Lal Jaiswal and Smt. Meera Devi, Partners of M/s. Vastralaya so as to make it appear that the report had been prepared by the Chief Cashier Shri Upadhyaya and on that basis, the petitioner obtained sanction with mala fide intention and obliterated the signature of the office copy of the Financial Report to cover up the forgery.

Charge No. 3 was that the petitioner non-judiciously, and indiscriminately sanctioned loans to borrowers without taking adequate and proper security. He thus misled the Bank by not complying with the terms stipulated by him in the sanction and thereby failed to protect the interest of the Bank.

Charge No. 4 was that the petitioner did not get the equitable mortgage of the properties of the borrower and the guarantors and also did not obtain Gift Deed executed from the borrower in favour of the guarantors as was stipulated by Zonal Office and thereby failed to comply with the terms of the sanction.

Charge No. 5 was that the petitioner did not adhere to the procedure at the time of sanction and disbursement of the demand loan against fixed deposits and thereby failed to protect the interests of the Bank.

4. The aforementioned charge-sheet dated 14.6.1993 (Annexure-1) which was framed vide Memo No. 137, was served upon the petitioner on 7.7.1993. On 7.8.1993 the enquiry in relation to the first charge-sheet and the supplementary charge-sheets dated 19.2.1993 and 1.6.1993 was completed.

5. On 21.8.1993, one A.P. Khandekar appointed as Enquiry Officer in relation to the charge-sheet dated 14.6.1993, but however four days thereafter, i.e., on 25.8.1993, the Enquiry Officer was changed and in his place one M.D. Deval was appointed as Enquiry Officer. On 30.8.1993, the Enquiry Officer informed the petitioner to appear at Buxar on 11.9.1993. However, it was wrongly mentioned that it was pursuant to charge No. 331 which was never served upon the petitioner. Rather, charge No. 137 dated 14.6.1993 (Annexure 1) was served upon him. This would be apparent from the fact that on 17.9.1993 by Annexure-4, the Regional Office forwarded a letter dated 8.9.1993 (page 36) to the petitioner and that letter shows that it was from M.D. Deval addressed to the petitioner informing him about the error. The petitioner has made a grievance that this letter was issued after expiry of the date on which the petitioner was to attend the enquiry, because it was served on 20.9.1993 when the enquiry was supposed to have been held on 11.9.1993. However this grievance does not find support with the Court, inasmuch as from a perusal of various paragraphs of the Amendment Application filed on 17.2.2003, it will be apparent that the petitioner had knowledge about the other dates when the enquiry was supposed to have been held, but the petitioner went, on avoiding the same on one pretext or the other.

6. Returning once again back to the facts, it is evident from reading the contents of Annexure-7 at page 50 that on 27.9.1993 a Meeting of the Board was held which approved the adoption of the revised Regulation 20 of 1979 Regulations and Regulation 20(3)(iii) reads as follows :--

20(3)(iii). The officer against whom disciplinary proceeding 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.

7. On 20.10.1993, the impugned order/letter as contained at Annexure 5 was issued in terms of Regulation 20(3)(iii) whereby and whereunder it was ordered that notwithstanding his date of superannuation on 31.10.1993, the disciplinary proceedings would continue against him in the same manner as if he was in the

service of the Bank until the proceedings were concluded and final orders passed. In other words, he would be deemed to be continuing in service only for purposes of the disciplinary proceedings until they were concluded and final orders passed thereon.

8. On 28.10.1993, the petitioner was punished in relation to the other two charge-sheets dated 19.2.1993 and 1.6.1993 and he was reverted to the Middle Management Scale II (initial). Thereafter 31.10.1993 was the date of Superannuation of the petitioner, but because of the impugned order that has been passed on 20.10.1993, the disciplinary proceedings were made to continue against him as per Regulation 20(3)(iii) in the manner stated above.

9. The petitioner filed this Writ Application on 18.11.1993 and it was admitted for final hearing on 17.7.1995. On 16.5.2002 when this matter was taken up, time was given to the parties to inform this Court about the status of the departmental proceeding, whereafter, on 17.2.2003, the petitioner filed an application for amendment stating therein the during the pendency of the Writ Application, an order had been passed on 6.11.1998 (Annexure-8 to the said Amendment Application) whereby and whereunder the punishment of dismissal from service had been inflicted upon him. Accordingly, the petitioner also prays for quashing the said Order.

10. The major thrust of argument of Mr. Saurav Arun, learned counsel for the petitioner is that on account of the fact that the 1979 Regulation was kept in abeyance, the same could not have been applied upon the petitioner.

At paragraph 18 of the Writ Application, the petitioner has stated "that till the date Regulation 20 of the said Service Regulation which was put in abeyance has not been in force or notified" (quoted verbatim).

Similarly at paragraph 20 of the Writ Application, the petitioner has stated that "no substitution of Regulation 20 has either been approved by the Central Government or any consultation with the Reserve Bank of India has been made. In other words, since Regulation 20 is not in force nor any substitution of Regulation 20 has been notified in terms of the said Act and as such the petitioner's services cannot be extended for the purpose of conclusion of the departmental proceedings." (quoted verbatim).

At paragraph 21 of the Writ Application, the petitioner has stated that "it is further stated that Regulation 20 is not alive. There is no other provision by which the services of the petitioner can be extended beyond his date of retirement for the purpose of conclusion of the departmental proceeding."

(quoted verbatim).

11. The aforesaid argument of Mr. Saurav Arun, learned counsel for the petitioner is totally devoid of merit. It is true that Clause 20(3)(c) of the 1979 Regulations was kept in abeyance of circular dated 11.3.1988 as would be evident from the contents of Annexure-7 at page 50 appended to the

supplementary affidavit. That Service Regulation has been quoted at paragraph 12 of the Writ Application and it reads as follows :-

"20(3)(c). An officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and final order is passed thereon."

12. From a perusal of the aforementioned Clause 20(3)(c), it is apparent that the same was in abeyance and an alternative regulation was under consideration by the Government as would be evident on reading the contents of Annexure-7 appended to the supplementary affidavit filed by the petitioner himself. Thus, it is not a case where the effect of Clause 20(3)(c) had been totally obliterated. It was kept in a state of suspended animation only and the most important, factual aspect is that much prior to the date of retirement of the petitioner which was 31.10.1993, the Board held a meeting on 27.9.1993 and approved the adoption of the revised regulation. This is also apparent from the same page of the same Annexure-7 appended to the supplementary affidavit filed by the petitioner. The revised regulation has already been quoted above at paragraph 6 but, for the sake of convenience, it is once again being quoted hereinbelow :--

20(3)(iii). The officer 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.

13. The aforementioned revised Service Regulation is to be found in the enclosure marked Annexure-1 which has been enclosed alongwith Annexure-7 appended to the supplementary affidavit filed by the petitioner, himself. Thus, Regulation 20(3)(iii) the adoption of which was approved by the Board on 27.9.1993, was not in abeyance on the date when the impugned order was passed i.e., 20.10.1993. What was in abeyance till 27.9.1993 was the earlier Regulation No. 20(3)(c) and not Regulation 20(3)(iii). If power had been exercised under Regulation 20(3)(c) on the date of the passing of the impugned order, then the language of Annexure-5 would have been that the petitioner was not being allowed to retire or was not being permitting to retire on his reaching the date of compulsory retirement but that he was being retained in service until the enquiry into the charge was concluded and the final order was passed thereon. Since the aforementioned Regulation 20(3)(c) which has also been quoted at paragraph 12 of the Writ Application stood revised and substituted by Regulation 20(3)(iii) on and from 27.9.1993 therefore the respondents correctly used the language that "the said disciplinary proceedings would continue against you in the same manner as if you were/are in the service of the Bank until the

said proceedings are concluded and final orders passed in respect thereof, in terms of Regulation 20(3)(iii) of the Central Bank of India Service Regulation, 1979. You will not receive any pay and/or allowance after the said date of your superannuation. You will not be entitled for the payment of retirement benefits until the said proceedings are completed and the final order is passed thereon. You will, however, be paid your own contribution to the Provident Fund".

Thus, the language used in the impugned order dated 20.10.1993 as contained at Annexure-5 is worded exactly as per the revised Service Regulation which stood approved upon adoption by the Board on and from 27.9.1993 as quoted above at paragraph 12 herein.

14. In that view of the matter, the argument of Mr. Saurav Arun, learned counsel for the petitioner to the effect that the respondent No. 3 has no jurisdiction to extend the services of the petitioner beyond the date of superannuation under a provision that was kept in abeyance is therefore wholly misconceived. Similarly, the other argument to the effect that the services could not have been extended is also wholly misconceived because under the provisions of Regulation 20(3)(iii), the respondents certainly had the jurisdiction to act strictly as per the said substituted and revised Regulation which clearly stipulates that an officer 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 passed in respect thereof. From a perusal of the impugned order, it is clear that it is not a case where the services were extended as has been argued by the learned counsel for the petitioner.

15. In view of the same reasoning therefore, the respondents were also fully justified to say that the petitioner will not receive any pay and/or allowance after the date of superannuation and that he will not be entitled to any retirement benefits until the proceedings were completed and final orders passed thereon save and except the Contributory Provident Fund. This is what Regulation 20(3) (iii) says and that is what the respondent No. 3 also correctly said/ordered when he issued the impugned order/letter dated 20.10.1993 as contained at Annexure-5.

16. In that, view of the matter, this Court having held that the respondents acted lawfully and well within the parameters of the Service Regulations, there is no occasion for this Court to either interfere with or quash the impugned order dated 20.10.1993 as contained at Annexure-5. Similarly, and for the same reason there is also no occasion for that Court to issue any writ of mandamus directing the respondents to treat the Departmental Proceedings to be closed on and from the date of superannuation. Accordingly, the Writ Application must therefore fail. The Writ Application is therefore, dismissed as being devoid of merit.

17. So far as the prayer for quashing the final order is concerned and which has

been brought on record vide Annexure-8 appended to the amendment application filed on 17.2.2003 and which is the order dated 6.11.1998, the same is also rejected on account of the fact that the authority which has passed the said order has done so on the basis of elaborate discussions based on facts and records.

While passing the final order dated 6.11.1998, he has recorded as follows : "The findings of the IA was made available to the CSO, Shri Pandey, but Shri Pandey did not make any submissions, instead he informed the then DA, his inability to make his submissions in view of his reported filing of a Writ Petition before Hon"ble High Court, Patna.

I have gone through the entire enquiry proceedings, the written brief of P.O. and the findings of the IA carefully and I am of the opinion that the CSO was given sufficient opportunity to defend his case but, he was not interested to do so. IA has taken care of to observe all the rules/procedures of the enquiry to provide natural justice. Further on my close evaluation of the entire case, I find that the CSO has acted with mala fide intention and in utter violation of the Bank's Rules and Regulations, as a result thereof monetary loss was suffered by the Bank. Hence, I hold the charges against the CSO as conclusive proved and award him the charge-wise punishment as under :--

Charge No. 1 - Proved

Reduction by two stages in the time scale of pay for two years with cumulative effect.

Charge No. 2 - Proved Dismissal from Bank's Service.

Charge No. 3 - Proved Dismissal from Bank's Service.

Charge No. 4 - Proved

Reduction by three stages in the time scale of pay for two years with cumulative effect.

Charge No. 5 - Proved

Reduction by two stages in the time scale of pay for two years with cumulative effect.

I, therefore, award him the consolidated penalty of "dismissal from Bank's Service" under Regulation 4(j) of the Central Bank of India Officers Employees" (Discipline and Appeal) Regulation, 1976 amended upto date"

(quoted verbatim).

18. This Court will not substitute itself as if it is an appellate Court and will not interfere with findings based on facts. If the petitioner is aggrieved by the final order, he may challenge the same before an appropriate forum in accordance with law or he may prefer a Departmental Appeal against the same. In the event

such an appeal is filed and if there is a time limit for filing such an appeal, then the authority may consider the desirability of condoning the delay on the ground that the Writ Petitioner was pursuing his remedy before this Court.

With the aforesaid observation, this Writ Application is dismissed.