
R.N.R.

Before M. M. Kumar & T.P.S. Mann, JJ.

MEHAR SINGH VIRK,—Appellant

versus

PUNJAB AND SIND BANK AND ANOTHER,—Respondents

**LPA No. 822 of 2010
in CWP No. 5809 of 2009**

12th January, 2011

Constitution of India, 1950—Art. 226—Punjab and Sind Bank Officer Employee (Discipline & Appeal) Regulations, 1981—Reg. 6(1)—Punjab and Sind Bank (Officers’) Service Regulations, 1982—Reg. 20—Issuance of show cause notice soliciting appellant’s reply as to why disciplinary proceedings be not taken against him—Retirement of appellant on attaining age of superannuation—After about 5-½ months of retirement charge sheet issued under Reg. 6(1) of 1981 Regulations—Reg. 20 (i) & (ii) of 1982 Regulations deal with those type of cases where an officer is merely facing a show cause notice and makes an attempt to escape from such proceedings—Reg. 20 (iii) provides that if charge sheet has already been issued prior to date of superannuation then such proceedings are to continue even after superannuation as if he was in service—No charge sheet or inquiry initiated against appellant prior to his retirement—Appeal allowed, judgment of Single Judge set aside while directing Bank to release all retrial benefits to appellant.

Held, that a perusal of Sub Regulation 3(i) and (ii) would show that it incorporate a specific prohibition against an officer suspected to have committed a misconduct by stipulating that if disciplinary proceedings are pending then he cannot leave/discontinue or resign from service without the prior approval in writing of the competent authority. It is further clarified that any notice for voluntary retirement or for resignation given by such an officer before or during the disciplinary proceedings was not to take effect unless it is accepted by the competent authority. The language of sub Regulation (ii) patently shows that disciplinary proceedings would be deemed to be pending against an employee for the purpose of this regulation, if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him. Sub regulation (i) and (ii) deal with those type of cases where an officer is merely facing a show cause notice and he makes an attempt to escape such proceedings. The work 'pending' would not include the stage when the disciplinary proceedings have actually been initiated by issuing charge sheet under the provisions of 'Regulation 1981' because during period of suspension or show cause notice, the employer is to make up his mind whether there is a prima facie case made out to initiate disciplinary proceedings or not.

(Para 10)

Further held, that a perusal of Sub Regulation (iii) would clearly show that it is an exclusive provision which deals with a situation when the employer has taken cognizance and after due application of mind had decided to initiate disciplinary proceedings by issuing charge sheet. If the charge sheet has already been issued prior to the date of superannuation then such proceedings are to continue even after his superannuation as if he was in service and, therefore, the said regulation deals with the situation where the disciplinary proceedings have been initiated as against the situation where they are pending.

(Para 11)

Parveen Gupta, *Advocate for the appellant.*

J. S. Saathi, *Advocate for the respondents.*

M.M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent is directed against judgment dated 12th March, 2010 passed by the learned Single Judge of this Court upholding the condition incorporated in the order of superannuation dated 31st July, 2008. The petitioner-appellant was relieved subject to the condition of pendency of disciplinary enquiry. The order reads thus :—

“on attaining the age of superannuation retirement today after working hours except for the purpose of completion of disciplinary case pending against (him) and (his) remaining terminal dues shall be settled in terms of clause 3(iii) of Regulation 20 of the Punjab and Sind Bank (Officers’) Service Regulations 1982 (for brevity, ‘1982 Regulations’) and Regulation 46 of P&B (Employees Pension) Regulations 1995, after the disciplinary proceedings against (him) are completed and final order is passed.”

(2) The contention of the petitioner-appellant was that he had retired on 31st July, 2008 and there was no charge-sheet or enquiry initiated against him on that date, which was issued nearly 6 months later on 15th January, 2009. The learned Single Judge has rejected the contention by placing reliance on Regulation 20.3 (ii) of the 1982 Regulations, which reads as under :—

‘(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.’

(3) The learned Single Judge also took support from the Division Bench judgment of this Court rendered in the case of **T.S. Gandhok versus Punjab & Sind Bank**, (1) and quoted para 15 of the aforesaid judgment to conclude that issuance of a show cause notice is sufficient for raising inference that the disciplinary proceeding would be deemed to be pending against a delinquent employee and issuance of charge-sheet would not be decisive factor.

(4) The petitioner-appellant was issued a show cause notice on 12th February, 2008 soliciting his reply as to why the disciplinary proceedings be not taken against him. It is apparent from the record that no charge sheet was issued to the writ petitioner-appellant prior to his retirement on or before 31st July, 2008. As already stated, a charge-sheet was issued on 15th January, 2009 (P-3) under Regulation 6(1) of the Punjab & Sind Bank Officer Employee (Discipline and Appeal) Regulations, 1981 (for brevity, 'the 1981 Regulations'). The aforesaid Regulations deal with initiation of disciplinary proceedings and inflicting of penalties of dismissal, removal and termination of service and reduction in time scale.

(5) Mr. Parveen Gupta, learned counsel for the appellant has vehemently argued that Regulation 20(3) of the 1982 Regulations deals with termination of service of an officer working in the respondent-Bank. According to Mr. Gupta, Sub Regulation (i) of Regulation 20(3) of the '1982 Regulations' deals with entirely a different situation than the one prevailing in the case in hand. Learned counsel has maintained that basic object of Sub-Regulation (i) of Regulation 20(3) of the 1982 Regulations is to restrain an officer from escaping disciplinary proceedings by way of resigning or seeking voluntary retirement because otherwise an officer who is facing a probe in respect of his misconduct would be able to escape by resigning or seeking his voluntary retirement. Therefore sub Regulation (ii) of Regulation 20(3) imposes an embargo by defining 'pending disciplinary proceedings'. Accordingly, it has been provided that disciplinary proceedings would be deemed to be pending, if an employee has been placed under suspension or any notice to show cause has been issued to him soliciting his reply why the disciplinary proceedings shall not be instituted against him. Mr. Gupta states that in such a situation the proceedings would be deemed to be pending until final orders are passed by the Competent Authority. Mr. Gupta has maintained that expression '*initiated*' used in clause (iii) of Sub Regulation 20(3) of the 1982 Regulations is of paramount importance to understand that 'pendency' of disciplinary proceedings by virtue of issuance of show cause or on account of suspension would be one thing and the 'initiation' thereof is an independent action which is to follow later in point of time as per the requirement of 1981 Regulations. He has submitted that learned Single Judge has not kept this distinction in mind and has blanketly followed the view of the Division Bench judgment rendered in the case of T.S. Gandhok (*supra*).

(6) Mr. Gupta, learned counsel has further pointed out that judgment in T.S. Gandhok's case (*supra*) emerges entirely from different facts because the employee was un-authorisedly absent from service. In order to escape disciplinary proceedings, he submitted a request for voluntary retirement on 12th January, 1997. Obviously his request came after he was informed that his absence has been treated as unauthorised and it constituted a misconduct in terms of Regulations 13 of the 1981 Regulations. According to Mr. Gupta, it would be a case where restraining an officer from resigning or seeking voluntary retirement with ulterior motive of escaping disciplinary proceedings which were pending for that purpose alone and, therefore, there was no requirement of the Regulation that the disciplinary proceedings should have been initiated as the situation prevails in the present case.

(7) In support of his submission, Mr. Gupta has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **UCO Bank versus Rajinder Lal Capoor, (2)** and has argued that the learned Single Judge has committed an error of law by observing that Hon'ble the Supreme Court did not make any reference to Sub Regulation (ii) and therefore, the judgment of Hon'ble the Supreme Court was not applicable. According to learned counsel, the judgment in **Rajinder Lal Capoor's case** (*supra*) is fully applicable to the case in hand as Regulations are *pari materia*. He has placed specific reliance on paras 14, 15 and 22 of the main judgment.

(8) Mr. J.S. Sathi, learned counsel for respondent-Bank has, however, supported the view taken by the learned Single Judge and has argued that in the absence of any specific stipulation in the statutory rule, pendency of disciplinary proceedings may be linked with issuance of charge-sheet but when '1982 Regulations' specifically stipulates issuance of a show cause notice seeking explanation of an employee concerning his misconduct then in that case it would be deemed to be pendency of disciplinary proceedings and general principle that the disciplinary proceedings and would be deemed to be pending only when a charge-sheet is issued would not apply. According to learned counsel, an employee committing misconduct should not escape the punishment merely because a charge-sheet has not been issued before the date of his superannuation and that the learned Single Judge has taken correct view. Accordingly, he has urged that appeal is liable to be dismissed.

(9) A significant question which has emerged for determination of this Court is whether Regulation 20(3)(i)(ii) on the one hand and the Regulation 20(3)(iii) on the other hand, operate in two different areas. The question whether Regulations 20(3)(i)(ii) exclusively deal with issue of ensuring that no employee is able to resign or seek voluntary retirement after committing misconduct or that it would include the issuance of charge sheet as well. We would venture to find answer to the aforesaid question by examining and analyzing the Regulation 20(3), which reads thus :

“20.3 (i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of Competent Authority and any notice a resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.”

(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 contribution to CPF.”

(10) A perusal of Sub Regulation 3(i) and (ii) would show that it incorporate a specific prohibition against an officer suspected to have committed a misconduct by stipulating that if disciplinary proceedings are pending then he cannot leave/discontinue or resign from service without the prior approval in writing of the competent authority. It is further clarified

that any notice for voluntary retirement or for resignation given by such an officer before or during the disciplinary proceedings was not to take effect unless it is accepted by the competent authority. The language of sub Regulation (ii) patently shows that disciplinary proceedings would be deemed to be pending against an employee for the purpose of this regulation, if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him. We find that learned counsel for the petitioner-appellant has rightly submitted that sub Regulation (i) and (ii) deal with those type of cases where an officer is merely facing a show cause notice and he makes an attempt to escape such proceedings. The word 'pending' would not include the stage when the disciplinary proceedings have actually been initiated by issuing charge-sheet under the provisions of 'Regulation 1981' because during period of suspension or show cause notice, the employer is to make up his mind whether there is a *prima facie* case made out to initiate disciplinary proceedings or not.

(11) A perusal of sub Regulation (iii) would, however, clearly show that it is an exclusive provision which deals with a situation when the employer has taken cognizance and after due application of mind had decided to initiate disciplinary proceedings by issuing charge sheet. If the charge sheet has already been issued prior to the date of superannuation then such proceedings are to continue even after his superannuation as if he was in service and therefore, the said regulation deals with the situation where the disciplinary proceedings have been initiated as against the situation where they are pending.

(12) The respondent-Bank also has Discipline and Appeal Regulations of 1981. The disciplinary proceedings are initiated in terms of 1981 Regulations and not in terms of 1982 Regulations. It is pertinent to notice that 1982 Regulations would be attracted when no disciplinary proceedings are to be initiated. The 1981 Regulations would, however, be attracted when a disciplinary proceeding is initiated.

(13) The aforesaid issue has come up for consideration of Hon'ble the Supreme Court in Rajinder Lal Capoor's (*supra*) where the Regulation 20(3) of the UCO Bank (Officers') Service Regulations 1979 (for brevity 'the 1979 Regulations') was subject matter of interpretation. The aforesaid Regulations 20(3)(i)(ii)(iii) of the 1979 Regulations are *pari materia* with

the Regulations 20(3)(i)(ii)(iii) of the 1982 Regulations of the respondent-Bank. It would first be necessary to set out the relevant part of the 1979 Regulations of UCO Bank, which reads as under :

- “3(i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of competent authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.
- (ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the competent authority.
- (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 contribution to CPF.”

(14) A perusal of the aforesaid Regulations would show that in language, contents and effect, it is *pari materia* to 1982 Regulations of the Respondent-Bank. Accordingly, the interpretation given to the UCO Bank Regulations would *ex facie* apply to Regulations of the respondent-Bank.

(15) The Regulations of the UCO Bank have been interpreted by Hon'ble the Supreme Court in paras 14 to 19 of the judgment in **Rajinder Lal Capoor's case** (*supra*). Those paras are reproduced here under for facility of reference :

- “14. Sub-regulation (2) of Regulation 20 of the 1979 Regulations places an embargo on an official to leave or discontinue his service of the bank without giving a notice in writing. It prescribes

a period of notice. Sub-regulation (3) of Regulation 20, however, places an embargo on an officer to leave or discontinue or resign from service without the prior approval in writing of the competent authority and a notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority.

Clause (ii) of Sub-regulation (3) of Regulation 20 must be considered from that aspect of the matter. It raises a legal fiction. Such legal fiction has been raised only for the purpose of "this Regulation" and for no other, which would mean Regulation 20(1). The final orders which are required to be passed by the competent authority although indisputably would be in relation to the disciplinary proceedings but evidently it is for the purpose of accepting resignation or leaving or discontinuing of the service by the employee concerned or grant of approval thereof. Clause (ii) of Sub-regulation (3) of Regulation 20 in effect and substance acts as a proviso to clause (i) thereof.

15. Clause (iii) of Sub-regulation (3) of Regulation 20 is an independent provision. It provides for continuation of the disciplinary proceedings. Such disciplinary proceedings indisputably for the purpose of applicability of Sub-regulation (3) must have been initiated in terms of the 1976 Regulations.
16. It is worth noticing the distinction between terminologies "proceeding pending" or "proceeding initiated". Clause (ii) of Sub-regulation (3) of Regulation 20 defines what would be pending, viz., for the purpose of attracting Clause (i) thereof.

A disciplinary proceeding is initiated in terms of 1976 Regulations, which are applicable only in a case where a proceeding is initiated for the purpose of taking disciplinary action against a delinquent officer for the purpose of imposing a punishment on him.

Disciplinary proceedings, thus, are initiated only in terms of the 1976 Regulations and not in terms of the 1979 Regulations.

It is worth noticing that the 1979 Regulations would be attracted when no disciplinary proceeding is possible to be initiated. The 1976 Regulations, however, on the other hand, would be attracted when a disciplinary proceeding is initiated.

Both operate in separate fields. We do not see any nexus between Regulations 20(1) and 20(2) of the 1979 Regulations and the 1976 Regulations.

17. The 1976 Regulations provide for the mode and manner in which a disciplinary proceeding is initiated. It expressly provides for service of charge sheet. Service of charge sheet is a necessary ingredient for initiation of disciplinary proceeding. A preliminary enquiry is not contemplated under the 1976 Regulations. If such an enquiry is held, the same is only for the purpose of arriving at a satisfaction on the part of the disciplinary authority to initiate a proceeding and not for any other purpose.
18. If it is found that a disciplinary proceeding can be and should be initiated, recourse to the 1976 Regulations would have to be taken, if not, the 1979 Regulations may be resorted to if the conditions precedent therefor are satisfied. It is only with a view to put an embargo on the officer to leave his job, Clause (ii) of Sub-Regulation (3) of Regulation 20 of the 1979 Regulations has been made. It's scope is limited.
19. We have noticed hereinbefore that each regulation operates in different fields. When a proceeding is initiated for the purpose of taking any disciplinary action on the ground of any misconduct which might have been committed by the officer concerned indisputably the procedures laid down in the 1976 Regulations are required to be resorted to." (emphasis added)

(16) Hon'ble the Supreme Court after expressing itself in the aforesaid manner proceeded to observe in para 22 as under :—

- “22. Drawing up of a charge sheet, therefore, is the condition precedent for initiation of a disciplinary proceedings. We have notice in paragraph 15 of our judgment that ordinarily no disciplinary proceedings can be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceedings despite the officers reaching the age of superannuation must be statutory rule. A fortiori it must be a rule applicable to a disciplinary proceedings.”

(17) Once the view taken by Hon'ble the Supreme Court in respect of parallel Regulations so intimate in language, content and effect to the Regulations of the respondent-Bank then there is hardly room for any arguments. Therefore, we find that the matter is covered against the respondent and in favour of the petitioner-appellant. We are constrained to observe with utmost respect to the learned Single Judge that in the face of view of Hon'ble the Supreme Court, which is rooted in the celebrated judgments rendered in the cases of **Union of India versus K.V. Jankiraman, (3)** ; **Union of India versus Sangram Kesari Nayak (4)** and **Coal India Ltd. versus Saroj Kumar Mishra, (5)** no other view could have been possible. Therefore, respectfully following the aforesaid view, the appeal is liable to be accepted.

(18) We are also in agreement with the arguments of learned counsel for the petitioner-appellant that the judgment of the Division Bench in **T.S. Gandhok's case (supra)** is distinguishable on facts because that was a case of preventing a delinquent employee from escaping the consequences of misconduct and his contention that the notice given by him for resignation should be deemed to have been accepted was rightly rejected. The other argument raised by him that the employer employee relationship has come to an end was also rightly rejected. The aforesaid judgment has no application to the facts and circumstances of the present case.

(19) As a sequel to the above discussion, the appeal succeeds. The judgment rendered by the learned Single Judge is set aside and the writ petition is allowed. Consequently, the charge-sheet dated 15th January, 2009 and consequential disciplinary proceeding initiated against the petitioner-appellant are hereby quashed. We also quash the condition incorporated in the order of retirement dated 31st July, 2008, which has made his retirement subject to disciplinary proceedings. Accordingly, respondent-bank is directed to release all the retrial benefits to the petitioner-appellant including regular pension, leave encashment, gratuity-cum-pension with effect from the date of his retirement with interest @ 8% per annum from the date the amount was due till the date the payment is made.

R.N.R.

(3) 1991 (4) S.C.C. 109

(4) 2007 (6) S.C.C. 704

(5) 2007 (9) S.C.C. 625