



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th SEPTEMBER, 2025

IN THE MATTER OF:

+ **LPA 64/2023**

SP SHARMA

.....Appellant

Through: Ms. Sriparna Chatterjee, Mr.
Soumitra Chatterjee, Mr. Manish Ms.
Mansi, Advs.

versus

STATE BANK OF INDIA AND OTHERS

.....Respondents

Through: Mr. Rajiv Kapur, SC for SBI along
with Mr. Akshit Kapur, AOR
Mr. Ankur Chhibber, Amicus Curiae
with Mr. Nikunj Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present appeal is filed by the Appellant herein assailing the judgment dated 28.01.2022 (*hereinafter referred to as "Impugned Judgment"*), wherein the learned Single Judge had dismissed the Writ Petition bearing No. 13764/2009 on the ground that the inquiry proceedings initiated against the Appellant herein does not suffer from any infirmity.

2. Shorn of unnecessary details, the facts leading to the present appeal are as follows –

- a. The Appellant herein is an employee of the Respondent No. 1 (*hereinafter referred to as "Respondent Bank"*) since the year 1969 and has been in service for about 38 years. The Appellant was due to



achieve his superannuation on 31.01.2007 and was serving as a Chief Manager of the Respondent Bank at the time of his retirement.

- b. Two days prior to his superannuation, the Appellant was served with a chargesheet dated 29.01.2007 on the following charges:

“ARTICLE OF CHARGE NO.1

In gross violation of the prescribed instructions, in sheer dereliction of duty and misusing the official position, Shri S. P. Sharma (a) sanctioned and disbursed Housing / Mortgage Loans to various borrowers but did not conduct purposeful pre - sanction inspections of the immovable properties, which were proposed to be equitably mortgaged as security of these loans, (b) failed to verify the antecedents of the borrower before sanction of a housing loan, and (c) while sanctioning two mortgage loans, falsely recorded outcome of the pre - sanction inspections in the Inspection Register that he had inspected the Houses of the borrowers.

ARTICLE OF CHARGE NO.2

In gross violation of the prescribed instructions, in sheer dereliction of duty and misusing the official position, Shri S. P. Sharma while sanctioning the loans to various borrowers, (a) did not obtain Search-cum-Non-Encumbrance Certificates from an Advocate of the Bank's approved panel, (b) did not verify value of the immovable properties mortgaged in the various Mortgage Loan A/cs, by personal inspections and confirming the same from the market sources, which were inflated by the Valuers in their Valuation Reports, (c) did not obtain complete chain of the Title Deeds and the affidavits from the owners of the immovable properties at the time of creating equitable mortgage, and (d) did not obtain completion letter / certificates



from the concerned borrowers / engineers regarding completion of the various Housing Projects.

ARTICLE OF CHARGE NO.3

In gross violation of the prescribed instructions, in sheer dereliction of duty and misusing the official position, Shri S. P. Sharma (a) did not obtain the required number of Post - dated Cheques (PDCs) from the concerned borrowers in various housing / mortgage loans to ensure monthly repayment of these loans, (b) handed over a cheque of a borrower to Shri Jitendra Singh Sirohi who encashed the same for Rs. 35,300/-in the S.B. A/c maintained at the Andhra Bank, Sadar Branch, Agra, which was deposited by one of the co-borrowers, along with 9 other pre - signed undated blank cheques in a Housing Loan Account.

ARTICLE OF CHARGE NO.4

In gross violation of the prescribed instructions, in sheer dereliction of duty and misusing the official position, Shri S. P. Sharma sanctioned / disbursed Consumer Loans to various borrowers for purchase of the Computers, without ensuring end-use of the Bank's funds.

ARTICLE OF CHARGE NO.5

In gross violation of the prescribed instructions, in sheer dereliction of duty and misusing the official position, Shri S. P. Sharma unauthorisedly entrusted the work of Accounts Division to a designated Dy. Manager (P) of the branch.

ARTICLE OF CHARGE NO.6



In gross violation of the prescribed instructions, in sheer dereliction of duty and misusing the official position, Shri S. P. Sharma (a) sanctioned and disbursed housing loans to various borrowers despite the Controlling Authority having refrained him from making further finance under the housing loan scheme till rectification of the irregularities pointed out in the Special Audit Report, and (b) sanctioned a Mortgage Loan to a borrower, who had purchased a plot a day before sanction of the mortgage loan circumventing the instructions of the Controlling Authority regarding refraining him for sanctioning the housing loans.

ARTICLE OF CHARGE NO.7

On account of the gross violation of the prescribed instructions, sheer dereliction of duty and misuse of official position on the part of Shri S. P. Sharma as per details given in the Imputations in support of the Article of Charges No.1 to 6 above, various accounts have turned to Non Performing Assets and become difficult of recovery. Thus, he exposed the Bank to a likely financial loss of Rs.59,24,245.88, as on 31.12.2006.

By his aforesaid acts of omission and commission, Shri S. P. Sharma misused his official position, violated prescribed instructions, displayed gross negligence, acted otherwise than in his best judgment, showed lack of due care, devotion and diligence in discharge of his duties and failed to protect the Bank's interest, which constitute serious acts of misconduct, in terms of the Regulations 50 (1), 50 (3) and 50 (4) of the State Bank of Bikaner & Jaipur (Officers') Service Regulations, 1979."

- c. The disciplinary proceedings against the Appellant were initiated under Regulation 19(2) of the State Bank of Bikaner and Jaipur



(Officers) Service Regulations, 1979 (*hereinafter referred to as "Service Regulations"*).

- d. In furtherance of the said proceedings, an Inquiry Officer was appointed and upon investigating the matter, an Inquiry Report was submitted to the Disciplinary Authority (*hereinafter referred to as "DA"*) on 12.10.2007 wherein the charges levelled against the Appellant were held to be partly proved.
- e. Against this Report, the Appellant herein made his representation before the DA on 23.11.2007, however, the said representation was rejected by the DA *vide* Order dated 06.08.2008 (*hereinafter referred to as "Dismissal Order"*), whereby the Appellant was penalised by way of dismissal from services.
- f. An appeal was preferred by the Appellant against the Dismissal Order before the Appellate Authority, however, the same was also dismissed *vide* Order dated 30.07.2009, thereby upholding the findings of the DA.
- g. Aggrieved by the proceedings initiated against him, the Appellant filed the Writ Petition bearing No. 13764/2009, which was allowed by the learned Single Judge *vide* Order dated 14.05.2012. In the said Order, the learned Single Judge records that the Respondent Bank has erred in not supplying relevant documents along with the chargesheet to the Appellant, thereby violating the principles of natural justice.
- h. Impugning the Order dated 14.05.2012, the Respondent Bank filed an appeal bearing LPA No. 736/2012. The Coordinate Bench of this Court allowed the appeal *vide* Order dated 01.02.2013 setting aside



the argument of the Appellant that the necessary documents were not furnished by the Respondent. However, it was deemed appropriate by the Coordinate Bench of this Court to remand the matter back to the learned Single Judge as he did not deal with the plea of the Appellant regarding the disciplinary actions being violative of Regulation 19(2) of the Service Regulations.

- i. An SLP was preferred by the Appellant assailing the Order dated 01.02.2013, which came to be dismissed by the Apex Court on 03.07.2013. By the said Order, the Apex Court has granted liberty to the Appellant to file a Review Petition of the Order dated 01.02.2013 before the Division Bench of this Court.
- j. Taking the liberty granted by the Apex Court, a Review Petition bearing No. 432/2013 was filed by the Appellant against the Order dated 01.02.2013, which came to be dismissed *vide* Order dated 09.05.2014.
- k. Since the Order dated 01.02.2013 remained unaffected, the matter was revived before the learned Single Judge as directed in the said Order dated 01.02.2013. The learned Single Judge has considered the matter only to the limited issue of remand i.e., whether the disciplinary actions violated Regulation 19(2) of the Service Regulations and the same was answered in negative *vide* Order dated 26.11.2015, thereby dismissing the Writ Petition.
- l. Aggrieved by the fact that the learned Single Judge did not adjudicate on the merits of the case despite several contentions raised before it, the Appellant herein filed an LPA No. 51/2016, which was allowed



by the Coordinate Bench of this Court *vide* Order dated 25.01.2016 for the reasons recorded therein as under :—

“10. As far as the other ground that the merits of the enquiry proceedings and the charges were never gone into is concerned, the order of the learned Single Judge dated 14.05.2012 merely records the submission regarding the procedural lapse alleged against the bank. In para 6 the learned Single Judge recorded that he heard the counsels for the parties. After this length of time, it is not possible for the Court to go into as to what the learned Single Judge in fact did hear but what he applied his mind was only as to the question of procedural infirmity in not furnishing material documents. On that basis alone, the findings of the enquiry officer and the penalty imposed were set aside. Quite naturally, only the bank was aggrieved by this order – the appellant did not and could not have filed an appeal. The Division Bench remitted the matter. Although the bank would have us believe that the remand was limited to the question of Regulation 19 (2) nevertheless there is nothing in the order itself which precludes a consideration of the merits viz-a-viz the contention of the findings of the enquiry officer as accepted by the disciplinary authority. It goes without saying that the grounds urged before the Court of the first instance have to be gone into by it lest or the litigant who approaches the court would be prejudiced. In the present case, that seems to have happened, perhaps unwittingly.

11. In view of the above findings, this court is of the opinion that the petition has to be considered afresh on the grounds urged before the learned Single Judge as to the findings recorded by the disciplinary authority based upon the conclusions of the enquiry officer’s report. The appeal, therefore has to succeed. W.P.(C)13764/2009 shall now be decided on the



merits as to the findings recorded by the enquiry officer and accepted by the disciplinary and appellate authorities ultimately leading the penalty of dismissal.

12. The appeal is allowed in the above terms. The learned Single Judge shall consider expediting and deciding the matter at his convenience preferably within six months from today ”

- m. In view of the foregoing, the matter was sent back to the learned Single Judge to adjudicate on the merits of the case i.e., the Appellant’s challenge to the inquiry proceedings.
- n. The learned Single Judge, while passing the Impugned Judgment, recorded that that the limited issue for adjudication therein is whether the inquiry proceedings initiated against the Appellant are perverse in nature or not. For this purpose, the learned Single Judge has dealt with every charge levelled against the Appellant and came to a conclusion that there is no perversity in the findings of the DA in the inquiry proceedings. The relevant portion of the Impugned Judgment is as follows –

“94. In the backdrop of the above position, I do not deem it necessary to enter into Articles 4 to 7 of the Articles of Charge against the petitioner, as Articles 4 and 5 were relatively minor, and Articles 6 and 7 have essentially been proved on the basis of the conclusions arrived at with respect the earlier Articles of Charge. Suffice it is to state that, even on the findings with respect to Articles 1 to 3 of the Articles of Charge against the petitioner, within the parameters of the law that has developed with respect to interference, in writ jurisdiction, with findings in departmental proceedings, no case for interference can be said to be made out. The submissions advanced by the petitioner



had been considered, in extenso, by the IO, and principles of natural justice have also been duly complied with. The findings of the IO stand affirmed by the DA and upheld in appeal. The contentions advanced by the petitioner have also been examined by the DA and the Appellate Authority. No procedural infraction can, therefore, be said to have occurred.

*95. Submissions were also advanced, by Ms. Chatterjee, on whether a punishment of dismissal could have been imposed under the relevant Rules and instructions. That, however, is beyond the purview of examination by me, as I am bound by the terms of remand, contained in the judgement, dated 25th January, 2016, of the Division Bench of this Court in LPA 51/2016. A holistic reading of para 10 and 11 of the said decision, as extracted in para 8 supra, make it clear, without equivocation, that the Division Bench has, *ex debito justitiae* remanded the matter only because, at the prior stages of litigation, no finding, regarding the merits of the charges against the petitioner, as upheld by the DA and the Appellate Authority, was returned by this Court. The remand case for consideration of the petitioner afresh on the ground is urged before the learned Single Judge as to the findings recorded by the disciplinary authority based upon the conclusions of the enquiry officer's report. This, in my view, has to be read with the observation, in para-10 of the judgement, that there had been no "consideration of the merits vis-à-vis the contentions of the findings of the enquiry officer as accepted by the disciplinary authority". The clear intent of the Division Bench was only to afford the petitioner an opportunity to try to convince the Court regarding the unsustainability of the findings, on merits, as returned by the authorities below, on the charges against him.*



96. That, despite a valiant and unquestionably sincere effort, Ms Chatterjee has, unfortunately, not been able to do so, essentially because of the position in law as regards interference by writ courts with findings of the disciplinary authority, especially in the case of bank officials.”

- o. The Appellant’s grievance is that the learned Single Judge failed to consider the contentions raised by the Appellant regarding the issue of dismissal from service while passing the Impugned Judgment.
 - p. The Appellant is aggrieved that the learned Single Judge *vide* Impugned Judgment did not consider or discuss on the issue of disproportionate penalty imposed on the Appellant while dismissing him from services. Hence, the instant appeal is filed challenging the Impugned Judgment to that effect.
3. Learned Counsel for the Appellant submitted that the dismissal of the Appellant from the services as a penalty cannot be imposed as it amounts to disproportionality.
 4. It is submitted that the bank officials are subjected to two set of rules – *one*, the State Bank of Bikaner and Jaipur (Officers) Service Regulations, 1979 (*hereinafter referred to as ‘the Service Regulations’*); and *two*, State Bank of Bikaner and Jaipur Employees’ Pension Regulation, 1995 (*hereinafter referred to as ‘Pension Regulations’*). It is averred that the provisions of the Service Regulations kick in when the employee’s service is still in subsistence, whereas the Pension Regulations are applied to an employee who has retired from the services.
 5. It is stated that the Appellant was subjected to dismissal from service as per Regulation 67(j) of the Service Regulations. However, the Appellant,



being a retired employee, can be subjected only to the Pension Regulations and therefore, awarding a punishment outside the scope of such Regulations cannot be sustained. It is contended that the penalty of dismissal from service can be awarded only when the employee is still serving, however, given that the Appellant has superannuated, only two types of punishment can be inflicted as per Regulation 48 of the Pension Regulations – withholding/withdrawal of pension or recovery of pecuniary loss. However, the Disciplinary Authority, inflicted disproportionate punishment on the Appellant by dismissing him from service, which is not warranted for a retired employee.

6. It is further stated that the Respondent Bank *vide* letter dated 17.03.2011 had recovered the alleged loss from the Appellant as per Rule 12(2)(b) of the Payment of Gratuity to Employee Regulation, 1970 (*hereinafter referred to as “Gratuity Rules”*). It is submitted that the Respondent Bank having imposed a penalty of dismissal from services cannot further recover the loss as per the Gratuity Rules as it is implied that the retired employee will be forfeited from all service benefits accrued to him prior to his superannuation. It is stated that non-adherence to one set of rules amounts to perversity in imposing penalty on the Appellant herein.

7. *Per Contra*, Mr. Ankur Chibber, learned *amicus curiae*, submitted that the punishment of dismissal can be imposed on the Appellant, even though he is a retired employee, as the disciplinary proceedings were initiated before he attained his superannuation. The Appellant superannuated while the disciplinary proceedings were in continuance. It is submitted that merely because the Appellant is a retired employee, the provisions of the Pension Regulations will come into the picture. It is stated



that the entire disciplinary proceedings, from the start to the end, were conducted solely in terms of the Service Regulations and therefore, any punishment inflicted on the Appellant will be in terms of the said Regulations and the same cannot be bypassed merely because of the Appellant has superannuated after the proceedings were initiated.

8. The learned *Amicus Curiae* submits that the disciplinary proceedings against the Appellant were initiated under Regulation 19(2) of the Service Regulations. Charges were also proved under Regulations 50(1), 50(2) and 50(4) of the Service Regulations, and the punishment of dismissal was imposed in accordance with Regulation 67(j) of the Service Regulations. It is submitted that given that the proceedings were initiated in terms of Regulation 19(2) of the Service Regulations, the Appellant will be subjected to the penalty mentioned under Regulation 67 of the Service Regulations.

9. It is further averred that the question as to whether an employee after attaining the age of superannuation can be dismissed from service was already answered by the Apex Court in the case of Mahanadi Coalfields Limited v. Rabindranath Choubey, **2020 SCC OnLine SC 470**, wherein it was held that the punishment can be imposed after the retirement as per the relevant service rules governing the workmen.

10. It is contended that the Appellant can be dismissed from service as there is a legal fiction provided under Regulation 19(2) of the Service Regulations that for the purposes of continuance and conclusion of disciplinary proceedings, the employee is deemed to be in service. Therefore, the argument of the Appellant that he is a retired employee and



shall be subjected only to the penalty of withholding/withdrawal of pension or recovery of pecuniary loss does not come into effect.

11. It is pointed out that the Pension Regulations will be applicable only when an employee falls within the ambit of being a “pensioner”, as prescribed under the Pension Regulations. He contended that the Appellant will not fall within the said ambit of being a pensioner as he is dismissed from services and therefore, not subjected to Pension Regulations.

12. Learned Counsel for the Respondent Bank supported the case of the learned *amicus curiae* and contended that the Appellant can be dismissed from service even after superannuation as Regulation 19(2) of the Service Regulations as the same lays out a legal fiction that for the continuation and conclusion of disciplinary proceedings, the employee is deemed to be in service. Given that the service Regulations specifically provided for, the Appellant is subjected to the dismissal from service as per Regulation 67 thereof.

13. Heard both the Counsels for the parties and perused the record.

14. Before proceeding any further, it is apposite to mention that the question which arises for adjudication in the present case is whether an employee who has attained the age of superannuation can be inflicted with the penalty of dismissal from service.

15. For the sake of convenience, the relevant provisions relied upon both the parties are mentioned hereunder:-

i. Regulation 19(2) of the Service Regulations, which reads under:-

*“19(2). In case disciplinary proceedings under the relevant regulations of service have been initiated against an officer **before he ceases to be in the Bank's service** by the operation of, or by virtue of, any of the*



*said regulations or the provisions of these regulations, the **disciplinary proceedings** may, at the discretion of the Managing Director, **be continued** and concluded by the authority by which the proceedings were initiated in the manner provided for in the said regulations **as if the officer continues to be in service**, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.” (emphasis supplied)*

ii. Regulation 67 of the Service Regulations reads as under:-

“67. Without prejudice to any other provisions contained in these regulations any one or more of the following penalties may be imposed on any officer, for an act of misconduct or for any other good and sufficient reason:-

MINOR PENALTIES:-

a) Censure

b) Withholding of increments of pay with or without cumulative effect,

c) Withholding of promotion.

d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

e) Reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officers pension.

MAJOR PENALTIES

f) Save as provided for in (e) above, reduction to a lower stage in the time-scale of pay for a specified



period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay

g) Reduction to a lower grade or post.

h) Compulsory retirement

i) Removal from service:

j) Dismissal

Explanations:-

The following shall not amount to a penalty within the meaning of this regulation.

(i) Withholding of one or more increments of an officer on account of his failure to pass a prescribed departmental test with the terms of appointment to the post which he holds:

(ii) stoppage of increments of an officer at the efficiency bar in a time scale, on the grounds of his unfitness to cross the bar:

(iii) non-promotion, whether in an officiating capacity or otherwise of an officer to a higher grade or post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case,

(iv) reserving or postponing the promotion of an officer for reasons like completion of certain requirements for promotion or pendency of disciplinary proceedings.



(v) reversion to a lower grade or post, of an officer officiating in a higher grade or post, on the grounds that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct.

(vi) reversion to the previous grade or post, of an officer appointed on probation to another grade or post during or at the end of the period of probation, in accordance with the terms of his appointment or rules or orders governing such probation:

(vii) reversion of an officer to his parent organisation in case he had come on deputation;

(viii) termination of service of an officer

a) appointed on probation in terms of sub-regulation (3) (a) of regulation 16:

b) appointed in a temporary capacity otherwise than under a contract or agreement on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment:

c) appointed under a contract or agreement in accordance with the terms of such contract or agreement and;

d) as part of retrenchment.

(ix) termination of service of an officer in terms of regulation 20:

(x) retirement of an employee in terms of regulation 19.”



iii. Regulation 48 of the Pension Regulations reads as under:-

*“48. Recovery of Pecuniary loss cause to the Bank-
(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:*

Provided that the Board shall be consulted before any final orders are passed:

Provided further that departmental proceedings, if instituted while the employee was in service shall, after the retirement of the employee be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service:

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

(2) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee:



Provided that where a part of pension is withheld or withdrawn the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations.”

16. It is the case of the Appellant that only the Pension Regulations governs a retired employee and the same will be applicable to impose a penalty as specified in the Pension Regulations. The Appellant also contended that since the charges against him are proved, he is liable to be penalised only as per Regulation 48 of the Pension Regulations i.e., withholding/ withdrawal of pension and recovery of pecuniary loss.

17. The Appellant, being a bank employee, is subjected to two Regulations – *one*, the Service Regulations and *two*, the Pension Regulations. It is a matter of fact that the disciplinary proceedings against the Appellant have been initiated while he was in service, however, the order of dismissal has been passed after his superannuation.

18. For this purpose, it is apposite to reproduce Regulation 2 of the Service Regulations, which reads as under:-

“2(1) These regulations shall apply to all officers of the Bank and to such other employees of the Bank to whom they may be made applicable by the Competent Authority to the extent and subject to such conditions as such Authority may decide.

(2) They shall also apply to officers transferred/posted/deputed outside India except to such extent as may be specifically or generally prescribed by the Competent Authority.

(3) They shall, however, not apply to employees appointed/engaged in any country outside India and permanently serving there.”



19. Similarly, Regulation 3 of the Pension Regulations reads as under:-

3. Application—These regulations shall apply to employees who,—

“(1) (a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and

*xxx
xxx....”*

20. From a bare reading of the foregoing provisions, it is clear that the Service Regulations are applicable to those who are *in* service, whereas the Pension Regulations are applicable to those who *were* in service i.e., the retired employees of the Respondent Bank. Furthermore, it is pertinent to mention that under Regulation 2(u) of the Pension Regulations gives out the definition of “pensioner” which states that an employee eligible for pension under the Pension Regulations.

21. In the present case, the disciplinary proceedings under Regulation 19(2) of the Service Regulations were initiated as the Appellant was still in service at the time of issuance of chargesheet. The disciplinary proceedings continued after his superannuation and after findings have been recorded regarding the charges levelled against him, the Appellant was dismissed from service in accordance with Regulation 67(j) of the Service Regulations. Given that the Appellant was *in* service at the time of disciplinary proceedings initiation, he will be governed by the Service Regulations.



22. One other contention of the Appellant is that the penalty of dismissing him from service after his retirement cannot be imposed as the same cannot be effectuated, thereby making it redundant.

23. The said contention cannot be accepted as Regulation 19(2) of the Service Regulations specifically states that if the disciplinary proceedings in accordance with the relevant regulations of service are initiated before his services are ceased, the employee is deemed to be in service for the continuance and conclusion of the disciplinary proceedings. The provision creates a *legal fiction* that the employee will be deemed to be in service, even after his retirement, till such disciplinary proceedings initiated against him comes to an end.

24. The Apex Court in the case of the case of Ramesh Chandra Sharma v. Punjab National Bank, (2007) 9 SCC 15 observed that an employee, against whom the disciplinary proceedings were initiated while being in service, can be dismissed from service even after his superannuation and once dismissed, the employee shall not be subjected to penalty under Pension Regulations on the basis of “retirement”. The relevant paragraphs read as under:-

“9. The questions which, in the facts and circumstances, arise for our consideration are—(i) whether, in terms of the Rules governing the terms and conditions of services of the employees of the Bank, it was permissible for it to continue the disciplinary proceedings despite the fact that the respondent attained the age of superannuation; and (ii) whether the High Court could have, in the facts and circumstances of the case, substituted the punishment imposed by the appointing authority and the appellate authority by its own.



XXXX

13. The question as to whether a departmental proceeding can continue despite the delinquent officer's reaching the age of superannuation would depend upon the applicability of the extant rules. It may be true that the question of imposition of dismissal of the delinquent officer from service when he has already reached the age of superannuation would not ordinarily arise. However, as the consequences of such an order are provided for in the service rules, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law.

14. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] is an authority for the proposition that an officer of the bank cannot be allowed to flout the existing rules. In Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] this Court held : (SCC p. 73, para 7)

“In the case of a Bank—for that matter, in the case of any other organisation—every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority—that too



a course of conduct spread over a sufficiently long period and involving innumerable instances—is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit—huge profit, as the High Court characterises it—they are no less blameworthy. It is wrong to characterise them as errors of judgment.”

In this case also, the punishment of dismissal from service was upheld.

15. *The question, we may notice, came up for consideration before this Court in State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] wherein this Court while interpreting Regulation 470 of the Civil Services*



Regulations in State of U.P. v. Harihar Bhole Nath [(2006) 13 SCC 460 : (2006) 11 Scale 322] held as under : (Brahm Datt Sharma case [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , SCC p. 186, para 8)

“8. A plain reading of the regulation indicates that full pension is not awarded as a matter of course to a government servant on his retirement instead; it is awarded to him if his satisfactory service is approved. If the service of a government servant has not been thoroughly satisfactory the authority competent to sanction the pension is empowered to make such reduction in the amount of pension as it may think proper. Proviso to the regulation lays down that no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority. Though the Regulations do not expressly provide for affording opportunity to the government servant before order for the reduction in the pension is issued, but the principles of natural justice ordain that opportunity of hearing must be afforded to the government servant before any order is passed. Article 311(2) is not attracted, nonetheless the government servant is entitled to opportunity of hearing as the order of reduction in pension affects his right to receive full pension. It is no more in dispute that pension is not bounty; instead it is a right to property earned by the government servant on his rendering satisfactory service to the State.”

16. The question, thus, as to whether continuation of a disciplinary proceeding would be permissible or the employer will have to take recourse only to the pension rules, in our opinion, would depend upon the



terms and conditions of the services of the employee and the power of the disciplinary authority conferred by reason of a statute or statutory rules.

17. *We have noticed hereinbefore that the Bank has made Regulations which are statutory in nature. Regulation 20(3)(iii) of the said Regulations reads thus:*

“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 officer concerned 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 contribution to CPF.”

The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect.

18. *The effect of a legal fiction is well known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in East End Dwellings Co. Ltd. v. Finsbury Borough Council [1952 AC 109 : (1951) 2 All ER 587 (HL)] as under : (All ER p. 599 B-D)*



If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

19. *The issue is, thus, no longer res integra, which as would be evident from the ratio laid down by this Court from time to time.*

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26. *Where a proceeding is initiated for withholding or withdrawal of pension, Regulation 43 of the Pension Regulations would be attracted. But provisions of the said Regulation if read in its entirety clearly go to show that an officer would not qualify for pensionary benefits, if inter alia, he is dismissed from service.*

27. *Regulation 48 empowers the Bank to recover pecuniary loss caused to it from the pensionary benefits. Regulation 20(3)(iii) of the (Discipline and Appeal) Regulations must be read in conjunction with the Pension Regulations. Where the employees are pension optees, Regulation 48(1) shall apply. In any event, if an officer is removed or dismissed from service under Regulation 4 of the (Discipline and Appeal) Regulations, the Bank need not take recourse to Regulation 48 of the Pension Regulations as Regulation 22 thereof would be attracted.*



28. We are, therefore, of the opinion that the High Court committed a manifest error in passing the impugned judgment.”

25. The Apex Court in the case of Mahanadi Coalfields Limited v. Rabindranath Choubey, 2020 18 (SCC) 71, also relied on Ramesh Chandra Sharma (supra), observed as follows:-

“27. In *Ram Lal Bhaskar [SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249 : (2012) 1 SCC (L&S) 402]*, the employee was in service when the inquiry was initiated. He was dismissed from service after attaining the age of superannuation. This Court considered the argument that the order of the appellate authority was illegal and without jurisdiction. The Rules provided that disciplinary proceedings could be continued in the same manner as if the officer continued to be in service. Thus, it was held that the employee was deemed to be in service for the continuance of proceedings. No merit was found in the submission that inquiry and order of dismissal passed after superannuation was illegal and without jurisdiction. The relevant discussion is extracted hereunder : (SCC pp. 252-53, paras 8-10)

“8. The learned counsel for Respondent 1, on the other hand, supported the impugned order [*Ramlal Bhaskar v. SBI, Writ-A No. 8415 of 2003, order dated 12-4-2006 (All)*] of the High Court and submitted that there is no infirmity in the impugned order of the High Court. He further submitted that in any case Respondent 1 had retired from service on 31-1-2000, and though the charge-sheet was served on him on 22-12-1999 when he was still in service, the enquiry report was served on him by letter dated 28-9-2000 and he was dismissed from service on 15-5-



2001 after he had retired from service. He submitted that after the retirement of Respondent 1, the appellant had no jurisdiction to continue with the enquiry against Respondent 1. In support of this contention, he cited the decision of this Court in *UCO Bank v. Rajinder Lal Capoor* [*UCO Bank v. Rajinder Lal Capoor*, (2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550].

9. We have perused the decision of this Court in *UCO Bank v. Rajinder Lal Capoor* [*UCO Bank v. Rajinder Lal Capoor*, (2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] and we find that in the facts of that case the delinquent officer had already superannuated on 1-11-1996 and the charge-sheet was issued after his superannuation on 13-11-1998 and this Court held that the delinquent officer having been allowed to superannuate, the charge-sheet, the enquiry report and the orders of the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction. In the facts of the present case, on the other hand, we find that the charge-sheet was issued on 22-12-1999 when Respondent 1 was in service and there were clear provisions in Rule 19(3) of the State Bank of India Officers Service Rules, 1992, that in case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the bank's service by the operation of, or by virtue of, any of the rules or the provisions of the Rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the Rules as if the officer continues to be in service, so however, that he



shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

10. We may mention here that a similar provision was also relied on behalf of UCO Bank in UCO Bank v. Rajinder Lal Capoor [UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] in Regulation 20(3)(iii) of the UCO Bank Officer Employees' Service Regulations, 1979, but this Court held that the aforesaid regulation could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service. Thus, the aforesaid decision of this Court in UCO Bank v. Rajinder Lal Capoor [UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] does not support Respondent 1 and there is no merit in the contention of the counsel for Respondent 1 that the enquiry and the order of dismissal were illegal and without jurisdiction.”
(emphasis supplied)

In the instant case, Rule 34.2 of the CDA Rules holds the field and is binding, in the absence of any statutory interdiction made by any other provision regarding continuance of the inquiry and for taking it to a logical end in terms of the deemed continuation of the employee in service. The decision of this Court in Ram Lal Bhaskar [SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249 : (2012) 1 SCC (L&S) 402] is by a three-Judge Bench, which is binding.

28. The reliance placed on the provision contained in Section 4(6) of the Payment of Gratuity Act, 1972, is devoid of substance. The Act is to provide for a scheme for payment of gratuity to the employees.



Section 2-A of the Act specifies the continuous service and what would amount to interruption and exclusion therefrom. An employee in continuous service, within the meaning of Section 2-A(1), for one year or six months, as provided, shall be deemed to be in continuous service. Section 3 deals with the appointment of the Controlling Authority. Section 4 deals with the payment of gratuity. Section 4(1) provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on his superannuation, or retirement or resignation, or his death or disablement due to accident or disease. Five years of continuous service shall not be necessary in case a person ceased to be in service due to death or disability. Section 4(2) provides for entitlement of gratuity for every completed year of service or part thereof, in excess of six months, the employer shall pay gratuity at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. Section 4(5) provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. What is ensured under the Act is the minimum amount of gratuity.”

26. In light of the foregoing paragraphs, the following conclusions are made by this Court:-
- a. Since, the disciplinary proceedings were initiated against the Appellant under Regulation 19(2) of the Service Regulations while he was still in service and the disciplinary proceedings were commenced after his superannuation, the Dismissal Order was passed



against him after his superannuation, the Service Regulations will be made applicable.

- b. Since, Regulation 19(2) of the Service Regulation consists of a *legal fiction* stating that even after his superannuation, the Appellant is deemed to be in service for the purpose of continuation and conclusion of disciplinary proceedings initiated while the Appellant was in service, the penalty imposed on the Appellant under Regulation 67(j) of the Service Regulations is as per the procedure prescribed by the said Regulations and there is no deviation or bypassing of any procedure laid down therein.
- c. Finally, since it is ruled out that the Pension Regulations are not applicable to the instant case, the argument that the penalty of withholding/withdrawal of pension or recovery of loss is the only penalty leviable under Regulation 48 of the Pension Regulations cannot be accepted.
27. In view of the foregoing, the present appeal is devoid of any merits and is liable to be dismissed.
28. The appeal stands dismissed. Pending applications, if any, are also dismissed.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

SEPTEMBER 12, 2025
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