

Bank of indiaa through its general manager and Another Vs Narmada Prasad Choudhary

Court: Madhya Pradesh High Court (Jabalpur Bench)

Date of Decision: Jan. 20, 2025

Hon'ble Judges: Suresh Kumar Kait, CJ, Vivek Jain, J

Bench: Division bench

Advocate: Ashish Shroti,

Final Decision: Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Suresh Kumar Kait, CJ

1. By this common order, both these writ appeals are being disposed of as one has been filed by the appellant/Bank of India (hereinafter referred to as

Ã¢â‚¬Å“the BankÃ¢â‚¬Å“ and the another by the employee (writ petitioner) against the same impugned order allowing in part by the learned Single Judge.

2. Writ Appeal No.445/2024 has been filed by the Bank being aggrieved by the order dated 23.11.2023 passed by the learned Single Judge in Writ

Petition No.3428/2021 whereby the writ petition filed by the writ petitioner Narmada Prasad Choudhary was partly allowed with the following

directions:-

Ã¢â‚¬Å“18. Accordingly this petition is allowed in part directing the respondent Bank to count the total service of the petitioner counting the period of 7

years 8 months and 11 days to be in service and hiss total length of service shall be calculated w.e.f 08.07.1974 till 30.06.2013, as such retiral benefits

and other pensionary benefits be calculated accordingly and other benefit for which the petitioner is entitled, be also granted to him treating him to be

in service during that period also. The aforesaid exercise be carried out within a period of three months from the date of receipt of copy of this order

and whatever arrears are drawn, the same shall also be paid to the petitioner within the aforesaid period. It is made clear that if arrears are not paid to

thee petitioner within the given time, the same will carry interest @ 8% per annum till the date of actual payment made to the petitioner.Ã¢â‚¬Å“

3. Writ Appeal No.720/2024 has been filed by writ petitioner Narmada Prasad Choudhary as well being aggrieved by that portion of the order dated

23.11.2023 passed by the learned Single Judge in the same petition i.e. Writ Petition No.3428/2021 declining the reliefs as prayed in Para 7(ii) to (v) in

the writ petition and seeks indulgence of this Court to grant the same.

4. The petitioner contends that the learned Single Judge allowed the writ petition in part. The prayer of the petitioner in his appeal is that the learned

Single Judge has declined the following reliefs as sought in the writ petition, which reads as under:-

ii) This Hon'ble Court may kindly be pleased to direct the Respondents to pay all the arrears of Fitment/appropriate

pension/Gratuity/Commutation/leave encashment/refund the salary 2,05,0000/- (deducted for 07 months 05 days) between the period 07/01/2002 to

30/06/2013 with all the consequential & promotional benefits along with 20% interest p.a. from 07/01/2002 till actual payment.

iii) Any other relief/ orders/ direction/ directions which this Hon'ble Court deems just and proper may also be passed in the interest of justice.

iv) Heavy cost of the petition may also be granted to the petitioner.

v) To quash the respondent's Appellate order dated 10/10/2009 (Annexure P/12) & Review order dated 21/06/2010 (Annexure P/133) and

respondents be also directed to pay arrears of salary/Fitment & revised monthly pension after re-calculation of appropriate Basic Pay from 07/01/2002

to 30/06/2013 and arrears of pension on revised basic pay from 01/07/2013 till date of actual payment along with an interest @ 20% p.a. from

07/01/2002 in the interest of justice.

5. The crux of the case is that the petitioner was working on the post of Senior Manager. A disciplinary proceeding was initiated against him in which

punishment of compulsory retirement was imposed by the disciplinary authority. The order of compulsory retirement was assailed by the petitioner in

Writ Petition No. 681 of 2003 before the learned Single Judge, which was finally heard and allowed vide order dated 01.12.2004, setting-aside the

order of compulsory retirement as well as all consequential orders passed by the authority and the matter was remitted back to the disciplinary

authority with a direction to impose adequate punishment, which would be proportionate to the delinquency proved. It was also directed that the

disciplinary authority would not impose the punishment of dismissal, removal, compulsory retirement and reversion. It was further directed that the

order of punishment shall be passed after reinstating the petitioner in service. The petitioner shall not be entitled to any back wages.

6. The said order dated 01.12.2004 passed by the learned Single Judge was assailed by the Bank by filing Writ Appeal No.107 of 2007, which was

dismissed vide order dated 11.09.2007 and the matter was remitted back to the appellate authority to decide the quantum of punishment to be imposed

on the petitioner after keeping in mind the observations made by the Court in the said order, within a period of two months of receipt of certified copy

of the order.

7. Against the order dated 11.09.2007 passed by the Division Bench of this Court in Writ Appeal No.107 of 2007, the Special Leave Petitions

preferred by the Bank as well as by the writ petitioner were also dismissed by the Apex Court vide order dated 17.08.2009. The appellate authority,

thereafter, complied with the direction given by the Division Bench of this Court in Writ Appeal No.107 of 2007 and passed an order of punishment

on 10.10.2009 in the following manner:-

“Reduction of basic pay to the first stage of Officers’ cadre Junior Management Scale I for further three years with cumulative effect, with

immediate effect in terms of Regulation 4(f) of Bank of India Officer Employees’ (Discipline and Appeal) Regulations, 1976. Accordingly, the

basic pay of Shri N.P. Choudhary will be fixed at Rs.10,0000/-.”

8. Although a review was preferred against the said order, but the same was dismissed. Thereafter, the petitioner was informed vide letter dated

31.07.2013 (Annexure-P/16) giving details of his service, in which it was mentioned that the petitioner joined services with the Bank on 08.07.1974;

the order of compulsory retirement was passed on

07.01.2002; the petitioner joined after his reinstatement on 18.09.2009 and the petitioner retired on 30.06.2013. Though the total period of service was

38 years 11 months and 22 days, but the period of compulsory retirement i.e. 7 years 8 months and 11 days was excluded and the total service after

deduction of said period was calculated for payment of gratuity as qualifying service was 30 years 8 months and 6 days. Service ranking for gratuity

was shown as 31 years. In the said letter, the amount of gratuity payable to the petitioner was calculated as Rs.7,93,722/- and amount of gratuity

already paid to him was Rs.2,42,069/-, as such, remaining amount of gratuity i.e. Rs.5,51,653/- was credited in his account.

9. Thereafter, the petitioner submitted a representation to the respondents/Bank for release of arrears and also the order of promotion which was kept

under sealed cover and claimed that he may be granted full gratuity, leave encashment for 8 months’ salary, monthly pension of basic pay of

Rs.79,3310/- and also claimed refund of Rs.2,05,000/- which was illegally deducted from his salary treating as leave without pay whereas there was

sufficient leaves in his credit.

10. The main grievance as was raised by the petitioner is that the Bank unnecessarily excluded the period of service i.e. 7 years 8 months and 11 days

whereas his total service was 38 years 11 months and 22 days, but according to the petitioner, that period cannot be excluded from his total service

because the order of compulsory retirement was set-aside by this Court with a direction to reinstate him in service. The petitioner has also challenged

the order of punishment passed by the appellate authority in pursuance of the orders of writ Court and Division Bench on the ground that such type of

punishment is unknown to law. He placed reliance upon the judgment of Supreme Court reported in (2012) 5 SCC 242 - Vijay Singh Vs. State of

Uttar Pradesh & Others; the orders passed by Delhi High Court in W.P. No.(c) 625 of 2016 - V.K. Malhotra Vs. Union Bank of India; (2010) 11

SCC 71 -" South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh & Others; (1999) 5 SCC 762 -Bank of India & Another Vs. Degala

Suryanarayana; and order passed in SLPC No.1414-16 of 1998 - Kuldeep Singh Vs. Commissioner of Police to contend that he has been wrongly

denied the consequential benefits.

11. The Appellant/Bank filed their reply opposing the submissions made by the petitioner and raised objection with regard to the challenge made by the

petitioner about the order passed by appellate authority on 10.10.2009 submitting that the said order has been assailed by the petitioner in the year

2021 and there was no explanation given by the petitioner about the delay, therefore, the petition deserves to be dismissed on the ground of delay and

laches. It is also submitted that the petitioner has been paid retrial dues as per his entitlement. It is further contended that the order of punishment

passed by the appellate authority is not unknown to law, but it falls within the punishment prescribed under Regulation 4(f) of the Bank of India

Officer Employees' (Discipline & Appeal) Regulations, 1976. The petitioner did not perform the duties from 07.01.2002 to 17.09.2009, therefore,

benefit of the said period cannot be granted to him and that period has rightly been deducted from the total length of service. Also submitted that

petitioner was not eligible for CRS pension and the period for which the petitioner did not perform the duties, would not be counted for the purpose of

calculation of leave and other benefits.

12. Learned counsel for the Appellant/Bank further contended that the relief claimed by the petitioner by way of amendment, is barred by time, which

cannot be considered and the Petitioner cannot be granted any benefit for the reason that the order passed in the year 2009 was assailed in the year

2021 without there being any sufficient explanation for delay, therefore no illegality was committed by the Bank and the order passed by the learned

Single Judge is liable to be set aside.

13. Heard learned counsel for the parties and perused the record.

14. On perusal of the record, it reveals that the writ petitioner was imposed with a penalty of compulsory retirement after conducting the departmental

enquiry in relation to the charge of misconduct as levelled in the charge-sheet in terms of Regulation 4(f) of the Bank of India Officer Employees' Rules,

(Discipline & Appeal) Regulations, 1976 vide order dated 07.01.2002 passed by the Disciplinary Authority, which was affirmed by the Appellate

Authority vide order dated 16.08.2002. The petitioner challenged order of punishment of compulsory retirement as well as order of appellate authority

in Writ Petition No.681/22003, which was disposed of vide order dated 01.12.2004 by the learned Single Bench with the following directions:-

"12. In view of the aforesaid analysis, I am inclined to quash the order of compulsory retirement, Annexure P/255 and affirmation thereof,

contained in Annexure P/30. As a logical corollary all subsequent orders passed on review and mercy petition would also pave the path of extinction.

The matter is remitted to the disciplinary authority to impose adequate punishment, which would be proportionate to the delinquency proved. However,

the disciplinary authority would not impose the punishment of dismissal, removal, compulsory retirement and reversion. The order of punishment shall

be passed after reinstating the petitioner in service. The petitioner shall not be entitled to any back wages.

15. The Bank assailed the aforesaid order dated 01.12.2004 by filing an appeal i.e. Writ Appeal No.107/2007, which was disposed of by the Division

Bench vide order dated 11.09.2007 with following directions:-

"34. In the result, we hold that the order of compulsory retirement imposed on the respondent was irrational as per the Eynesbury norms and

extremely harsh on the respondent for the only charge of false claim of transportation of his belongings from Barkhedi to Sagar of Rs.5,410/-

established against him, but instead of quashing the order of compulsory retirement imposed by the disciplinary authority, we remit the matter to the

appellant authority to decide the quantum of punishment to be imposed on the respondent after keeping in mind the observations made by us in this

judgment within two months of receipt of a certified copy of this judgment.

16. Against the said order dated 11.09.2007 passed by the Division Bench in Writ Appeal No.107/2007, the Bank approached the Supreme Court in

SLP (c) No.21213/2007 and the writ petitioner too filed an SLP

(C) No.11988/2008 before the Supreme Court against the same order. Both the SLPs were dismissed by the Supreme Court vide order dated

17.08.2009. In consequence thereto, the order dated 11.09.2007 passed by the Division Bench of this Court in Writ Appeal No.1007/2007 has become

operational.

17. After dismissal of the aforesaid SLPs by the Supreme Court, the writ petitioner was reinstated in service vide order dated 28.08.2009 and he

joined the service on 18.09.2009 and was posted at Panagar Branch, Jabalpur. However, it was stated by the Bank that quantum of punishment will

be examined separately. While the petitioner was posted at Chhindwaara Branch, he was retired on attaining the age of superannuation on

30.06.2013.

18. It is pertinent to mention herein that in pursuance to the order dated 11.09.2007 passed by the Division Bench of this Court in Writ Appeal

No.107/20077, the Bank reconsidered the matter on the question of quantum of punishment and passed an order dated 10.10.2009 as below:-

“Reduction of basic pay to the first stage of Officers’ cadre Junior Management Scale I for further three years with cumulative effect, with

immediate effect in terms of Regulation 4(f) of Bank of India Officer Employees’ (Discipline and Appeal) Regulations, 1976. Accordingly, the

basic pay of Shri N.P. Choudhary will be fixed at Rs.10,0000/-.”

19. Thereafter, on 22.01.2010 the writ petitioner sought review of the aforesaid order dated 10.10.2009 passed by the Bank, which was disposed of

affirming the said order of punishment.

20. Ultimately, the Bank passed orders dated 31.07.2013 and 15. 09.2020 on the representations of the petitioner, which were filed prior to his

retirement, reducing the length of service of the petitioner and disentitling him for any terminal benefits.

21. The petitioner in the writ petition relatable to the present appeal assailed the orders dated 15.09.2020 (Annexure P/1) and 31.07.2013 (Annexure

P/16) and by way of an amendment, he also challenged the appellate punishment order dated 10.10.2009 (Annexure P/112) and review order dated

21.06.2020 (Annexure P/13) affirming the punishment order. The said writ petition was disposed of by the learned Single Judge vide order dated

23.11.2023 with the following directions:-

“18. Accordingly this petition is allowed in part directing the respondent Bank to count the total service of the petitioner counting the period of 7

years 8 months and 11 days to be in service and his total length of service shall be calculated w.e.f 08.07.1974 till 30.06.2013, as such retrial benefits

and other pensionary benefits be calculated accordingly and other benefit for which the petitioner is entitled, be also granted to him treating him to be

in service during that period also. The aforesaid exercise be carried out within a period of three months from the date of receipt of copy of this order

and whatever arrears are drawn, the same shall also be paid to the petitioner within the aforesaid period. It is made clear that if arrears are not paid to

the petitioner within the given time, the same will carry interest @ 8% per annum till the date of actual payment made to the petitioner.

22. It is not in dispute that the order on the question of punishment has been passed by the Bank in view of the order dated 11.09.2007 passed by the

Division Bench of this Court in Writ Appeal No.107/2007 which became operational after the dismissal the SLPs filed by the parties before the

Supreme Court.

23. Now the question which is to be considered in these appeals is whether the writ Court was justified in issuing the directions granting all the

consequential benefits including the period of compulsory retirement, while disposing of the writ petition.

24. We have gone through the order passed by the learned writ Court and are of the considered view that the learned Single Judge has rightly

considered that the period during which the petitioner was out of service and has not performed the duties, cannot be excluded from his total qualifying

service and also cannot be deducted from the total length of service of the petitioner, because in the earlier round of litigation when writ court was of

the opinion that the punishment of compulsory retirement was too harsh and the appellate authority after the observations made by the Division Bench

passed the order modifying the punishment of compulsory retirement to that of reduction of basic pay to the first stage of officer cadre Junior

Management Scale-1, after reinstating him in service, we are of the considered view that the writ petitioner cannot be denied benefits of the period

during which he was wrongly compulsorily retired from service and was kept away from the service due to currency of said punishment. In this view

of the matter, learned Single Judge has rightly observed that his total length of service should be counted including the period for which he was out of

service i.e. from 07.01.2002 to 17.09.2009. When the appellate authority modified the punishment which was imposed on the petitioner earlier then

there is no reason to deny him benefit for which otherwise he was entitled to.

25. The Supreme Court in the case of Union of India and others Vs. P. Gunasekaran reported in (2015) 2 SCC 610 has held as follows:-

“25. The last contention is with regard to date of effect of the punishment. According to the respondent, even assuming that compulsory retirement

is to be imposed, it could be only with effect from the date of order, viz., 28.02.2000. We are unable to appreciate the contention. The respondent

stood dismissed from service as per order dated 10.06.1997. It was that punishment which was directed to be reconsidered. Consequent thereon only,

the punishment was altered/substituted to compulsory retirement. Necessarily, it has to be from the date of dismissal from service, viz., 10.06.1997.

26. In one another case of NTR University of Health Services Vs. Prakasam Reddy reported in (2016) 16 SCC 645, the Supreme Court is of the view

that the punishment of dismissal or removal is substituted by other punishment, the substituted punishment will take effect from the original date of the

punishment. The relevant para of the judgment is as follows:-

4. Having heard the learned counsel appearing for the appellant/University and also the counsel for the respondent, we are of the view that interest of

justice would be served, in case the judgment of the learned Single Judge dated 09.03.2007 is implemented by substituting the punishment of

dismissal/removal by any other suitable punishment. The substituted punishment will take effect from the original date of the punishment viz.

5.03.1997. The monetary benefits, if any, flowing out of substituted punishment shall be disbursed to the respondent including the pensionary benefits,

if any, within the period of 10 weeks from today. The arrears, if any, shall carry interest @ 6% per annum with effect from 05.03.1997.

27. From the perusal of record, we notice that the SLP which was preferred by the Bank against the order passed by the Division Bench of this Court

in the earlier round of litigation was also dismissed by the Apex Court affirming the said order, in which it was observed that the punishment of

compulsory retirement was too harsh and the Court remitted the matter to the appellate authority to impose adequate punishment. The only charge of

false claim of transportation of his belongings from Barrkhedi to Sagar of Rs.5,410/- was established against the petitioner, then the appellate authority

after reinstating the petitioner passed the punishment order reducing the basic pay and the order of compulsory retirement was modified. In our

considered opinion, the authority had wrongly imposed the punishment of compulsory retirement which was not proportionate to the delinquency

proved against the petitioner and he was wrongly kept out of service and the adequate punishment was provided under the provision of the Bank of

India Officer Employees' (Discipline and Appeal) Regulations, 1976. The Apex Court in the aforesaid judgments observed that when the order of

punishment is modified to a lesser punishment, it shall apply from the date on which the original order of punishment was passed. Hence, the

appellant/Bank cannot be allowed to deny the consequential benefits to the petitioner, because the order of compulsory retirement was modified and

order of reinstatement was passed, therefore he shall be entitled for consequential benefits from the date on which original order of punishment was

passed.

28. In view of the above facts and circumstances and settled position of law, since the order of punishment of compulsory retirement was modified

into a lesser punishment by the appellate authority and petitioner was reinstated in service, we are of the considered view that the order of learned

Single Judge is justified. Hence, no interference is called for in these appeals. Both the writ appeals are hereby dismissed affirming the order of the

learned Single Judge. The Bank is directed to comply the order of learned Single Judge within four weeks from today.