



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

% **Judgment reserved on : 10 December 2024**
Judgment pronounced on : 08 January 2025

+ LPA 476/2013

ARJUN CHAWLAAppellant
Through: Petitioner-in-person.

versus

PUNJAB NATIONAL BANKRespondents
Through: Mr. Rajesh Kumar Gautam, Mr.
Anant Gautam and Ms.
Deepanjan Chaudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G E M E N T

1. This LPA¹ is directed against the judgment rendered by the learned Single Judge dated 09.05.2013 in terms of which the writ petition preferred by the appellant came to be dismissed.

2. We take note of the reliefs which were principally claimed in the writ petition that go as follows: -

- a) Issue writ, directions/orders quashing the order dated 18.08.2000 of the removal of the petitioner by the respondent;
- b) Issue a writ or directions quashing the enquiry report dated 24.04.2000 submitted by the Enquiry Officer;
- c) Direct the respondent to give the permission for the voluntarily retirement of the petitioner from 13.07.1998 and also direct to pre-matuirily retirement from the same;
- d) Pass such other order/orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

¹ Letters Patent Appeal



3. The brief facts leading to the filing of this appeal are that the appellant joined the respondent/bank in November, 1973 as Small Scale Industries Officer and was promoted as Chief Manager in 1984 and the appellant was lastly posted as Chief Public Relations & Publicity in the year 1996 in the head office and worked there till January, 1998. During the relevant time, the appellant was transferred to report to the Inspection Division at the Head Office for onward posting to Indore.

4. Evidently, the appellant submitted a notice of voluntary retirement on 15.04.1998 in terms of Regulation 29 (1) & (2) of the Punjab National Bank² (Pension) Regulations. In response thereof, the Assistant General Manager of the respondent bank *vide* letter dated 04.05.1998 informed the appellant that his request for voluntary retirement shall be considered after hearing from CBI³ or after finalization of the said case, which relates to a settlement arrived at the Head Office for a loan relating to Bhuj Branch (Gujrat), where appellant was working as Regional Manager Bombay. The appellant contends that the amount released on account of settlement was from one of the Bombay branches which though under the Administrative Control of the appellant, had neither been recommended nor sanctioned/released by him. Anyhow, it is pertinent to mention at this stage that the respondent in its counter affidavit acknowledges that the appellant was exonerated by CBI at the investigation stage itself.

5. It appears that the appellant did not go to the office under the

² PNB

³ Central Bureau of Investigation



belief that since there was no positive communication by way of any specific refusal, he was deemed to have retired voluntarily, and therefore, there was no question of reporting to the office. However, the respondent bank initiated disciplinary proceedings against the appellant for alleged absence from duty, which eventually resulted in the appellant's removal from service on 18.08.2000. This decision was upheld by the Appellate Authority on 18.11.2000.

6. Aggrieved thereof, the appellant challenged the dismissal through a writ petition being WP(C) 3154/2001, which came to be dismissed by the learned Single Bench of this Court *vide* order dated 09.05.2013, distinguishing the factual narrative of the instant matter from the precedent set in **J.P. Sharma v. Director General Border Roads**⁴ on the grounds of differing statutory provisions i.e., Regulation 29 of the PNB (Pension) Regulations and Rule 48A of the CCS (Pension) Rules, 1972. The relevant paragraphs of the decision of the Single Judge are reproduced herein:

“10. The judgment in the case of *J.P. Sharma (supra)* would have definitely helped the petitioner but in my opinion the judgment does not help the petitioner because the Single Judge of this Court in that case was concerned with the typical language of Rule 48A of the Central Civil Services (Pension) Rules, 1972 and in the first para of which there is no requirement of a specific acceptance to an application for voluntary retirement as is found in the subject Regulation 29(2). That relevant regulation which was in issue in the case of *J.P. Sharma (supra)* reads as under:-

“Rule 48-A-Retirement on completion of 20 years qualifying service-

(1) at any time, after a Government servant has completed twenty years qualifying service, he may, be giving notice of not less than three months in writing to the appointing authority, retire from service.

⁴ 47 (1972) DLT 575



(2) Proviso-

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

11. The aforesaid Rule 48-A in its first part does not use the expression of prior acceptance required qua the application for voluntary retirement and which is so specifically required in terms of Regulation 29(2) which is found in the present case. Learned Single Judge in the case of *J.P. Sharma (supra)* interpreted the Rule 48-A in terms of the proviso requiring the specific expression of 'refusal' because the first sub-Rule of Rule 48-A did not require specific acceptance and there was a deemed retirement on completion of three months' notice period. Therefore, in my opinion, the petitioner cannot get any benefit of the judgment in the case of *J.P. Sharma (supra)*.

16. In my opinion, though now the doctrine of proportionality is well-established in-service jurisprudence in this country, however, I am not inclined to interfere on this ground because petitioner has effectively not joined the services of the respondent-bank way back from 3.1.1998. I would have been inclined to take a liberal view if the petitioner had joined his duties on receiving the communication dated 4.5.1998 or even when the show cause notice dated 18.9.1998 issued by the respondent-bank to the petitioner, however the petitioner steadfastly remained obdurate and did not join the services of the respondent-bank even during the enquiry proceedings. No employee can presume that automatic leave is sanctioned to him or he is deemed to have automatically taken voluntary retirement because he feels so. If the petitioner was over confident that his application for voluntary retirement will be accepted he has to also take the adverse consequence if the interpretation of Regulation 29(2) would have not gone in his favour and which has so happened in the present case. Also, the doctrine of proportionality will come into play if the punishment shocks the judicial conscience as per the facts of the present case. Considering that the petitioner abandoned his services on the basis of his own interpretation given to Regulation 29(2), I do not feel that the action against the petitioner and the punishment inflicted upon him can in any manner be said to. shock the judicial conscience for this Court to interfere with the punishment by application of doctrine of proportionality.

punishment by application of doctrine of proportionality.

17. Finally, I must state that at the fag end of arguments petitioner very desperately sought to challenge the communication dated



4.5.1998 on the ground that the same was not issued by the competent authority viz the appointing authority, however, I find that there is absolutely no cause of action or grounds pleaded for this factual argument, and since what would be the factual position is not known because respondent has had no opportunity on facts to rebut, the contention now raised for the first time in final arguments, I disallow the petitioner to raise this ground.”

7. Hence, this appeal is preferred by the appellant.

LEGAL SUBMISSIONS ON BEHALF OF THE PARTIES

8. Learned counsel for the appellant has confined his submissions only to the issue regarding notice of voluntary retirement under Regulation 29(2) of the PNB (Pension) Regulations, its effect on the expiry of 90 days of the notice period and the benefits which the appellant is entitled after the completion of the mandatory period, the appellant is deemed to have been treated effectively. It is urged that the communication dated 04.05.1998 is not a refusal as per provisions of Regulation 29 of PNB Employees Pension Regulation 1995, and therefore, the same is deemed to have been accepted after the completion of 90 days notice period. Reliance is also placed by the petitioner on the cases of **State of Haryana v. S.K. Singhal**⁵, **B.J. Shelat v. State of Gujarat**⁶ and **Union of India v. Syed Muzaffar Mir**⁷.

9. *Per Contra*, learned counsel for the respondent has argued that the present case would not be covered upon joint reading of Regulation 20(3)(i) with Regulation 29(2) of the PNB (Pension) Regulations, since there is required a specific prior approval in writing

⁵ (1999) 4 SCC 293

⁶ (1978) 2 SCC 202

⁷ (1995) Supp (1) SCC 76



of the competent authority in cases which are covered under the Pension Regulation 29(2), and a mere silence will not do. It is further argued that the expression 'refuse' used in the proviso to Regulation 29(2) only means that in a particular language the employer has informed the employee that the voluntary retirement is not accepted, and, it is not the requirement that the communication to an employee must specifically use the expression 'acceptance' in case of acceptance and 'refuse' in case of refusal.

ANALYSIS & DECISION:

10. After hearing the learned counsels for the parties and on perusal of the record, we are unable to persuade ourselves to sustain the impugned Judgment dated 09.05.2013 passed by the learned Single Judge. In order to arrive at such decision, we assign the following reasons: **First things first**, Regulation 29(1)&(2) of the PNB (Pension) Regulations read as under:

“(1) On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charges of the post in the India and has served for a period of not less than one year;

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement.

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

(2) The notice of voluntary retirement given under sub-



regulation (1) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

11. A careful perusal of the aforementioned Regulations would show that an employee has been conferred the legal right to seek voluntary retirement upon completion of 20 years of qualifying service by giving notice of not less than three months in writing to the appointing authority. It is not the case of either of the parties that the appellant was on deputation during the relevant time, or that he sought absorption permanently in any other autonomous body, public sector, company or institution or body of which he was on deputation. Evidently, on applying for voluntary retirement *vide* letter dated 15.04.1998, a response dated 04.05.1998 was received, which goes as follows:

“PERSONNEL DIVISION

H.O.: NEW DELHI

PL: D.A.C

Date: 4.5.98

/REGD/

Shri Arjun Chawla
Concurrent Auditor (Chief Inspector)
C/o Insp.& Control Division,
Rajendra Place, New Delhi.

Res. Address
U-22 Green Park,
New Delhi

Your request for voluntary retirement

Please refer to your letter dated 15.4.1998 seeking voluntary retirement from the bank service with effect from 15.7.1998.

We have to advise that a case has been registered by the CBI against you *vide* RC No.2(E) BS & FC, Mumbai. The case is still under investigation and the Bank is pursuing the matter with



CBI for expediting their investigation in the case. **Your request for voluntary retirement will be considered after hearing from the CBI or after the finalization of the said case.**

Your attention is specifically drawn to Regulation 29(2) of Punjab, National Bank (Employees') Pension Regulations, 1995 in terms of which, notice for voluntary retirement requires acceptance by the competent authority.

Sd/
AGM-Personnel

Copy to:- The Dy. General Manager, Insp. & Contro. Division Head Office, New Delhi for information. A copy of the letter dated 15.4.1998 received from Shri Chawla is enclosed for information.

AGM-Personnel”

12. A careful perusal of the aforementioned letter would show that the option for voluntary retirement expressed by the appellant *vide* letter 15.04.1998 was neither accepted nor rejected and instead the matter was kept pending for consideration also *inter alia* inviting his attention to Regulation 29(2). If that was the case, then under Regulation 29(2) since the notice of voluntary retirement was not refused, the implications of the *proviso* must be deemed to have been invoked, thereby making the retirement effective from the date of the expiry of the period of notice.

13. In our opinion, the decision by the learned Single Judge resulting in the impugned Judgment dated 09.05.2013 was flawed inasmuch as it failed to appreciate that the proposition of law laid down in the earlier decision of this Court in the case of **J.P. Sharma** (*supra*). The issue in the said case arose in context of Rule 48A⁸

⁸ **Rule 48-A**-Retirement on completion of 20 years qualifying service-

(1) at any time, after a Government servant has completed twenty years qualifying service, he may, be giving notice of not less than three months in writing to the



which was interpreted to clearly lay down that in case of refusal to grant permission for voluntary retirement is not communicated to the petitioner by the appointing authority, within the period specified in the notice, the retirement shall become effective from the date of expiry of the said notice. It was a case where the petitioner had submitted four notices for voluntary retirement on 13.05.1987; 01.09.1987; 01.10.1987 and 01.04.1988; and the first notice was returned on the ground that it did not reach the Headquarter within 60 days in advance from the expiry of three months' notice; and the second notice was also returned on the ground that the papers for voluntary retirement have to be prepared in the reverted post, to which the employee/petitioner was placed and retirement could only be accepted by the competent authority applicable to the reverted post. The third notice was not accepted since it was communicated that the involvement of the delinquent officer/ petitioner had been anticipated in the vigilance case against another employee of the same department.

14. It was in the aforesaid backdrop that it was held as under:

“15. The second communication, which was addressed to the petitioner on May 31, 1988, only stated that the notice of voluntary retirement can be accepted, if required, by curtailing three months period, but the case of the petitioner will be processed only after the evidence of the Supervisor, in the Court of Inquiry ordered on January 1, 1988. The petitioner was requested to give evidence and obtain clearance from the Presiding Officer without further delay so that the case can be processed further. This communication also

appointing authority, retire from service.

(2) Proviso-

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period



cannot be termed as refusal of acceptance of notice of voluntary retirement, as the same clearly indicated that the matter was under consideration and the case will be processed after the evidence was recorded. The petitioner was only warned that as his leave had not been granted he must report for duty forthwith. There is no communication of refusal to the petitioner for permission for voluntary retirement within the time specified in the notice by the Appointing Authority. The provisions of Sub-rule 2 of Rule 48-A of the Central Civil Services (Pension) Rules, 1972, will come into operation and the retirement shall become effective from the date of expiry of the notice period by operation of law. In this context reference may be made to the judgment in *Jivan Krishna v. Union of India*, A.T.R. 1989 (1) C.A.T. 118.

16. The next contention, raised by the petitioner, has also some force in view of the fact that the alleged letter dated May 31, 1988, was only signed by EE(C) Officer Commanding with a copy endorsed to Head Quarter CE(P) Swastik for information. It may be relevant to say that the second notice of retirement, submitted by the petitioner, on September 1, 1987, was refused on the ground that papers for voluntary retirement have to be prepared as Supdt. BR 1 and the retirement can be accepted by the Chief Engineer. The communication dated May 31, 1988, even if it is accepted as refusal of the notice of voluntary retirement, was not issued by the Appointing Authority. Therefore, the same has no force in law.”

15. In light of the foregoing discussion, we are unable to endorse the reasons provided by the learned Single Judge, which distinguished the decision in *J.P. Sharma (supra)* and found it unhelpful to the appellant. It is undeniable that the proviso to Section 48-A is almost identical to Regulation 29(2). In summary, both provisions unequivocally state that while voluntary retirement requires acceptance by the appointing authority, if the authority neither refuses nor defers the decision on the notice of voluntary retirement, the retirement shall take effect upon the expiry of the notice period. Furthermore, it is noteworthy that there were no pending disciplinary proceedings against the petitioner at the time of his resignation, and



there were no legal impediments to consider his request.

16. In view of the above, we hold that the appellant's voluntary retirement took effect upon the expiry of three months from the date of the notice dated 04.05.1998. Consequently, the disciplinary enquiry initiated against the appellant after his cessation from service, resulting in the inquiry report dated 24.04.2000 and the subsequent punishment of removal from service dated 18.08.2000, is unsustainable in law. Therefore, the said punishment is hereby quashed.

17. The appeal is accordingly allowed thereby holding that the appellant stood voluntary retired from the respondent/bank w.e.f. 13.07.1998 with all the consequential benefits.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 08, 2025

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