HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 802/2025

1. State Bank Of India, Through Its Chairman, Corporate Center State Bank Bhawan, Ist Floor Madame Cama Road Mumbai 400021.
2. The State Bank Of India, Through Its Chief Zonal Manager, Zonal Office, Rajasthan, Jaipur.
3. The Chief General Manager, State Bank Of India, Regional Office, Sri Ganganagar.

----Appellants

Versus

R.k. Sharma S/o Shri P.n. Sharma, Aged About 67 Years, C/o Sharma Ice Factory, 96, Industry Area Hanumangarh Junctionj Hanumangarh. (Presently Residing At Flat No. M-102, Palam Apartment, G.f. Bij Wasan, Delhi 110061).

----Respondent

For Appellant(s)	:	Dr. Sachin Acharya, Sr. Adv. assisted by Mr. Chayan Bothra
For Respondent(s)	:	Mr. S.P. Sharma, Mr. Abhimanyu Khatri

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

<u>Order</u>

<u>25/02/2026</u>

1. This is an appeal assailing the judgment and order dated 12th March 2025, whereby the writ petition filed by the respondent, was allowed with the following order:-

> *"9. This Court is of the opinion that the process followed by the bank in this matter is legally flawed. An employee who has duly completed the required service period cannot be left in a state of uncertainty while awaiting a decision on his voluntary retirement application from the competent authority. Such undue delay and lack of clarity are unjust and procedurally improper. Furthermore, the subsequent charges of misconduct brought against the petitioner under Regulation 50 of the Service Regulations, 1979, are also legally unsustainable and in the given circumstances, these charges should be quashed, as they appear to be an afterthought rather than a legitimate course of action.*
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> *10. A coordinate bench of this Court addressed similar issues in the case of Bhanwar Lal Nagga v. State of*

Rajasthan (S.B. Civil Writ Petition No. 5997/2015) decided on 17.10.2022. In its judgment, the Court held that the decision to grant permission for voluntary retirement must be made by the appointing authority. Furthermore, it was clarified that voluntary retirement takes effect automatically upon the expiration of the notice period, provided the employee has duly complied with all procedural requirements. This ruling reinforces the principle that an employee cannot be left in uncertainty regarding their retirement status due to delays or inaction on the part of the appointing authority.

11. Accordingly, the instant writ petition is allowed in the following terms:-
a) The petitioner shall be considered to be retired from the respondent bank service by virtue of regulation 19 of the Service Regulations, 1979 with effect from 31.07.2002.
b) The impugned orders dated 29.07.2002, rejecting the petitioners application as well as order dated 05.12.2002 issuing the charge-sheet to the petitioner are hereby quashed and set aside.
c) The respondent is directed to provide all retirement and pensioner benefits to the petitioner as provided under Pension regulations of 1995 treating petitioner to have voluntarily retired with effect from 31.07.2002 in accordance with the Service Regulations, 1979."

2. Learned counsel appearing on behalf of the Bank submits that the application of the writ petitioner for voluntary retirement has been considered and rejected by the Managing Director, who has powers under Regulation 75 of the State Bank of Bikaner and Jaipur (Officers') Service Regulations, 1979 (hereinafter referred to as the 'Regulations of 1979') to reject the voluntary retirement application. The learned counsel submits that the learned Single Judge has erred in holding that the Managing Director was not a competent authority to accept the voluntary retirement application and the Executive Committee could have approved the decision of the Managing Director, which has been done in the present case.

3. The learned counsel appearing for the respondent on caveat submits that Regulation 29(2) of the State Bank of Bikaner & Jaipur (Employees') Pension Regulations, 1995 (hereinafter

referred to as the 'Regulations of 1995') provided for approval of the voluntary retirement application by the appointing authority and if the application seeking voluntary retirement is not refused before the expiry of the period specified under the Service Regulations, the retirement shall become effective from the date of expiry of the said period. He further submits that the competent authority as per Regulation 19 (1) of the Regulations of 1979 is the Executive Committee and the rejection of voluntary retirement application of writ petitioner was by an Officer, who was working against the post of Assistant General Manager. In the said rejection letter, he conveys that the competent authority has declined the request for the voluntary retirement, whereas from the documents placed on record with the reply, it is apparent that the competent authority had approved the denial of voluntary retirement in its meeting held on 08.08.2002, which was beyond the notice period. The writ petitioner would be, therefore, deemed to have retired from bank services. Learned counsel has also invited our attention to the Agenda (Annexure R-4), where the Chief General Manager and General Manager mentioned that in terms of extant instructions, the decision to deny voluntary retirement to an employee vests with the Executive Committee. It is also an admitted position that the request for voluntary retirement was rejected in anticipation of approval by the Executive Committee. He further submits that thus, rejection is illegal. It is also submitted that officer, who has declined the voluntary retirement application on 29.07.2002 was not holding any post of Assistant General Manager.

4. We notice that the learned Single Judge has examined these aspects and has held that the process carried out by the Bank is legally flawed.

5. In view of the aforesaid facts, we find that no charge-sheet was issued to the writ petitioner. It would be appropriate to quote here Regulation 19 of the Regulations of 1979 as well as the Regulation 29 of the Regulations of 1995, that read as under:-

Regulation 19 of the Regulations of 1979

*"**19. Age of Retirement***
(1) An officer shall retire from the service of the Bank on attaining the age of fifty eight years or upon the completion of thirty years, whichever occurs first.
Provided that the competent authority may, at its discretion. extend the period of service of an officer who has attained the age of fifty eight years or has completed thirty years' service as the case may be, should such extension be deemed desirable in the interest of the Bank.
Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after the 19th July 1969 and attained the age of 58 years, shall not be granted any further extension in service.(effective from 20th December 1984)
Provided further that an officer may, at the discretion of the Executive Committee be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service as the case may be, by giving him three months' notice in writing or pay in lieu thereof.
Provided further that an officer who has completed 25 years service may be permitted by the Executive Committee to retire from the Banks service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived.
(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 of 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.

Explanations:
(i) An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement.
(ii) If an officer's date of birth is the first of a Month, he will retire from the service at the close of the last day of the preceding month in which he completes the stipulated years of service or attains the age of retirement. However, if the date of birth happens to be on or after 2nd day of a month, the officer concerned shall retire from service at the close of the last day of the month in which he completes his age of retirement."

Regulation 29 of the Regulations of 1995

29. Pension on Voluntary Retirement

(1) On or after the 1st day of November, 1993 at anytime after an employee has competed 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 charge of the post in 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.
(3) (a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore.
(b) On receipt of request under clause (a), the appointing authority, may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

> *(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority; Provided that the request for such withdrawal shall be made before the intended date of his retirement.*
> *(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.*
> *(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension."*

5. From the perusal of the aforesaid Regulations, it is apparent that a person against whom, a departmental enquiry is pending, would not be eligible to seek voluntary retirement. At the same time, if a voluntary retirement application has been moved by any person against whom, there is no departmental enquiry pending, the same would be deemed to have been accepted, if there is no rejection during the period of notice mentioned in the application.

6. The writ petitioner sought voluntary retirement for personal reasons. The voluntary retirement application dated 30th April, 2002 was forwarded to the AGM along with three months' notice. The same was duly acknowledged by the AGM on 1st May 2002 mentioning that the voluntary retirement from bank services will be with effect from 31st July 2002 and in the meanwhile, it was also informed that approval from competent authority will be communicated and he will not be deemed to have retired from the service of the Bank. It appears that the said voluntary retirement application was not placed before the Executive Committee and on

29th July 2002, an officer working as Assistant General Manager communicated to the writ petitioner that his request for voluntary retirement cannot be considered as it has been declined by the competent authority. The same was in view of investigation/disciplinary proceedings being contemplated against him.

7. We, therefore, find that there was no departmental proceedings initiated against the writ petitioner, no charge-sheet was issued and on pointed query made to the learned Senior Counsel, it is informed that charge-sheet was issued on 5th December 2002, however, it is stated that as there was departmental enquiry in contemplation, the rejection of his application was in accordance with law.

8. We have noted above Regulation 19 of the Regulations of 1979, which requires a disciplinary proceedings to have been initiated for the purpose of denying voluntary retirement. The word 'initiation' has been considered in **Union of India Vs. K.V. Jankiraman, ETC.ETC[1].** and it has been held as under:-

> *"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the*

1 (1991) AIR(SC) 2010

employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)..

(3)..

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before.

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

9. In another case in **State Bank of India & Others Vs. Navin Kumar Sinha**[2], the same view has been reiterated, after considering the provisions of Regulation 19. Relevant paras of the judgment are as under:-

"23. Having surveyed the relevant legal provisions and the case law, let us now revert back to the essential undisputed facts of the case. Respondent was appointed in the SBI as a clerk typist on 08.06.1973. In due course of time, he rose through the ranks and reached

2 2024 INSC 874

managerial position. On completion of 30 years of service, he was due to superannuate on 26.12.2003. Exercising powers under Rule 19(1) of the Service Rules, respondent was granted extension of service vide order dated 05.08.2023 from 27.12.2003 to 01.10.2010. On 18.08.2009, a notice was issued to the petitioner wherein and whereby serious irregularities allegedly committed by him were highlighted and his response was sought for. On 21.08.2009, respondent was placed under suspension. Though respondent had submitted his reply to the notice dated 18.08.2009 on 27.10.2009, it appears that the disciplinary authority did not accept such reply and decided to initiate disciplinary proceeding against the respondent by issuing show cause notice dated 18.03.2011 under Rule 68(1) of the Service Rules. Alongwith the show cause notice, articles of charges and the statement of allegations on the basis of which the charges were framed, were sent to the respondent. There is nothing on record to show further continuance of service by the respondent beyond 01.10.2010. As noted above, service of the respondent was extended from 27.12.2003 to 01.10.2010.

24. From the above, it is evident that charge memo was issued to the respondent on 18.03.2011 after his extension of service was over on 01.10.2010. This is an undisputed jurisdictional fact.

25. Appellants have contended that respondent was paid subsistence allowance from his date of suspension i.e. 21.08.2009 till his dismissal from service vide order dated 07.03.2012 beyond 01.10.2010. Besides it was the case of the respondent himself before the enquiry officer, disciplinary authority as well as before the appellate authority that he was due to superannuate on 30.10.2012. He also did not plead either before the said authorities or before the High Court that he had ceased to be in service of SBI from 01.10.2010 and therefore the disciplinary proceeding initiated thereafter on 18.03.2011 was void-ab-initio. As such the learned Single Judge was not justified in accepting the challenge of the respondent to the order of penalty on a completely different ground.

26. We are afraid we cannot accept such a contention on behalf of the appellants. Where the disciplinary proceeding itself is without jurisdiction, upholding the same on the specious plea that it was not challenged on the ground of lack of jurisdiction would be tantamount to giving imprimatur to a patently illegal proceeding. This aspect was gone into by the learned Single Judge in the following manner:

> *6. After hearing learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons stated hereinbelow:*
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> *(I) Indisputably, on completion of 30 years of service in the year 2003, the services of the petitioner was extended till 01.10.2010 as per the State Bank of India officers (determination of term & conditions*

of services 1979). The alleged charges pertains to the extension period of the petitioner as Branch Manager, SBI, Tangerbansali Branch, Ranchi during the period 19.01.2006 to 29.10.2008 and 23.01.2009 to 22.08.2009. After submission of explanation to the alleged charges, the disciplinary authority decided to initiate departmental proceeding vide letter dated 18.03.2011 containing article of charges. In the disciplinary proceeding the order of dismissal has been passed under Rule 67(j) of the SBI Officers Service Rules which has been affirmed by the appellate as well as revisional authority. Admittedly, there has not been extension of service after 01.10.2010 nor any provision of relevant rules has been brought to the notice of this Court as to what would be effect the disciplinary proceeding after retirement. When there is no express order by the respondent bank for extension of services after 01.10.2010, the said date is to be treated as the date of retirement in usual course. In the instant case, the charge sheet was issued on 18.03.2011 after the date of deemed retirement of the petitioner when there was no specific order by the banking authorities for extension of services. Therefore, on that score, the impugned order of dismissal dated 07.03.2012 passed by the appointing authority being affirmed by the appellate authority as well as reviewing authorities being not legally sustainable is liable to be quashed. The view of this Court gets fortified by the decision of Hon'ble Supreme Court in the case of Union of India Vs. J. Ahmad reported in 1979 (2) SCC 286 which still holds the fields the entire departmental proceeding initiated against the petitioner after non-extension of service in terms of State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 as substituted on 23.02.1984 and State Bank of India Officers Service Rules, 1992 the relationship of master and servant has come to an end after 01.10.2010. Therefore, the respondent bank had no jurisdiction to initiate departmental proceeding without extension of services of the petitioner beyond 01.10.2010. Apart from the aforesaid legal of provision in the instant case as apparent from the pleadings of the parties the bank has not suffered any pecuniary loss for any act of omission or commission on the part of petitioner. In the aforesaid backdrop of fact the initiation of departmental proceeding and imposition of extreme punishment of dismissal from services is unreasonable, illegal and not legally sustainable."

10. The facts of the case thus are similar, where notice was of-course given but charge-sheet was issued much later in the point of time. In the meanwhile, the petitioner would be deemed to have voluntarily retired, as the rejection by the competent authority was beyond the period of notice, i.e., three months. We, therefore, do not find any reason to interfere with the order passed by the learned Single Judge.

11. The appeal is accordingly dismissed.

12. All pending applications also stand disposed of.

(BALJINDER SINGH SANDHU),J **(SANJEEV PRAKASH SHARMA),ACJ**

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