



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1279 OF 2024

STATE BANK OF INDIA & ORS.

APPELLANT(S)

VERSUS

NAVIN KUMAR SINHA

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. This appeal by special leave is directed against the judgment and order dated 11.02.2020 passed by a Division Bench of the High Court of Jharkhand at Ranchi (briefly ‘the High Court’ hereinafter) in LPA No. 505 of 2016. Appellants are the State Bank of India and its officers.

2.1. Respondent, an officer of the State Bank of India (SBI), was subjected to a disciplinary proceeding following which the penalty of dismissal from service was imposed on him. Departmental appeal filed by the respondent against the

dismissal order was rejected by the appellate authority; so also the petition for review. Respondent filed a writ petition before the High Court challenging the order of penalty as upheld by the appellate authority and the reviewing authority. Learned Single Judge allowed the writ petition and set aside the order of penalty on the ground that the disciplinary proceeding was initiated after superannuation of the respondent including the extended period of service. Therefore, such disciplinary proceeding was held to be *void ab initio* and the consequential order of penalty set aside with a further direction to the appellants to pay the retiral and other dues of the respondent.

2.2. Appeal filed by the appellants was also dismissed by a Division Bench of the High Court. Against such dismissal of the letters patent appeal, Special Leave Petition (C) No. 11413 of 2020 was filed by the appellants. This Court by order dated 16.10.2020 had issued notice. As an interim measure, it was directed that the contempt proceedings stated to have been initiated by the respondent against the appellants before the High Court be deferred. The matter was finally heard on 23.01.2024 when leave was granted.

3. Before proceeding further, it would be appropriate to briefly encapsulate the relevant facts so as to have a proper perspective of the *lis*.

4. Respondent was appointed as clerk typist in the SBI on 08.06.1973. He was promoted from time to time. On completion of 30 years of service, respondent was due to superannuate on 26.12.2003 as per the State Bank of India Officers' (Determination of Terms and Conditions of Service) Order, 1979.

4.1. However, by order dated 05.08.2003 issued by the competent authority, respondent was given extension of service from 27.12.2003 to 01.10.2010.

5. On 18.08.2009, a notice was issued to the respondent by the appellant SBI calling for his explanation as to why disciplinary action should not be initiated against him for violating instructions of SBI. The allegations highlighted in the notice mostly pertained to sanctioning of loans by the respondent in favour of his relatives in deviation of banking norms and missing of documents related to sanctioning of the loans.

6. On 21.08.2009, respondent was placed under suspension.

7. Respondent submitted reply dated 27.10.2009 to the notice dated 18.08.2009. However, it appears that the disciplinary authority did not accept such reply of the respondent.

7.1. Thereafter on 18.03.2011, appellants decided to initiate disciplinary proceeding against the respondent in terms of Rule 68(1) of the State Bank of India Officers' Service Rules, 1992 (for short 'the Service Rules' hereinafter). Deputy General Manager (Operations and Credit), NW-II, Jharkhand acting as the disciplinary authority issued show cause notice dated 18.03.2011 enclosing therewith articles of charges supported by a statement of allegations and a list of documents on the basis of which the charges were framed. The charges were the same as the allegations in the previous notice issued on 18.08.2009. Respondent was called upon to submit his written statement of defence within the prescribed period. It may be mentioned that the disciplinary authority had appointed an enquiry authority to conduct the enquiry against the respondent. On 29.11.2011, respondent submitted his defence brief denying all the allegations totalling 20.

7.2. Enquiry proceeding started on 24.05.2011 and concluded on 06.09.2011. Thereafter on 08.12.2011, the enquiry

officer submitted the enquiry report to the disciplinary authority. Out of the 20 allegations, the enquiry officer held that 16 were proved; 3 were partly proved; and one not proved. The disciplinary authority *vide* the forwarding letter dated 17.12.2011 forwarded a copy of the enquiry report to the respondent calling upon him to respond thereto within 15 days from the date of receipt of the report.

7.3. Respondent submitted his reply to the disciplinary authority on 15.01.2012 pointing out various flaws in the enquiry report and requesting the said authority to drop the proceeding.

7.4. The disciplinary authority, however, passed order dated 07.03.2012 imposing the penalty of dismissal from service on the respondent. Respondent preferred an appeal against the order of penalty. However, by order dated 26.10.2012, the appeal of the respondent was dismissed. It was thereafter that respondent preferred a review petition which also came to be dismissed by the reviewing authority *vide* the order dated 16.01.2014.

8. Aggrieved thereby, respondent preferred a writ petition before the High Court assailing the order of penalty dated 07.03.2012 as affirmed by the appellate authority *vide* the order

dated 26.10.2012 and by the reviewing authority *vide* the order dated 16.01.2014. The writ petition was registered as W(S) No. 3446 of 2014. *Vide* the judgment and order dated 06.09.2016, a Single Bench of the High Court held that service of the respondent was extended till 01.10.2010 after his superannuation in the year 2003. There was no further extension of service after 01.10.2010. Departmental (disciplinary) proceeding was initiated on 18.03.2011 when the chargesheet was issued by the disciplinary authority to the respondent which was admittedly after 01.10.2010. Therefore, the appellant bank i.e. SBI had no jurisdiction to initiate departmental (disciplinary) proceeding beyond 01.10.2010. That being the position, the order of penalty dated 07.03.2012, the order of the appellate authority dated 26.10.2012 and the order of the reviewing authority dated 16.01.2014 were set aside and quashed. Appellants were directed to extend consequential service benefits to the respondent.

9. The aforesaid judgment and order dated 06.09.2016 passed by the Single Bench was assailed by the appellants before the Division Bench of the High Court in LPA No. 505 of 2016.

9.1. *Vide* the judgment and order dated 11.02.2020, the Division Bench concurred with the view of the Single Bench and

held that departmental (disciplinary) proceeding could not have been initiated and continued after superannuation of the respondent. Consequently, the Division Bench dismissed the letters patent appeal of the appellants as being devoid of any merit.

10. Appellants had assailed the above findings before this Court by way of a special leave petition and on leave being granted, the present civil appeal came to be registered.

11. Respondent has filed counter affidavit. While defending the judgments of the Single Bench and the Division Bench of the High Court, respondent has stated that he had joined service in the appellant bank on 08.06.1973. As per requirement of Rule 19(1) of the Service Rules, appellant bank had extended the service of the respondent on completion of 30 years of service from 27.12.2003 to 01.10.2010. From 01.10.2010, no order, either oral or written, was issued by the appellant bank further extending the service of the respondent. Therefore, the master and servant relationship between SBI and the respondent came to be severed on 01.10.2010.

11.1. During the extended period of service i.e. on 18.08.2009, appellant bank had issued a notice to the respondent

alleging irregularities by the respondent in the sanction and in the following up of advances and demand draft purchase for the periods from 19.01.2006 to 29.10.2008 and from 23.01.2009 to 22.08.2009.

11.2. Thereafter on 21.08.2009 respondent was placed under suspension.

11.3. Respondent had exchanged several rounds of communication with the appellant bank to permit him to have access to documents relied upon by them while making the allegations against the respondent. In view of the documents being very voluminous, respondent had sought for time to submit his explanation which was declined by the appellant bank.

11.4. Disciplinary authority *vide* the show cause notice dated 18.03.2011 informed the respondent that departmental (disciplinary) proceeding was being initiated against him on the articles of charges framed. Respondent has contended that initiation of disciplinary proceeding on 18.03.2011 was after expiry of the extended period of service of the respondent on 01.10.2010. Be that as it may, disciplinary authority had appointed an enquiry officer who conducted enquiry into the charges and thereafter submitted his report on 17.12.2011.

11.5. On the basis of the enquiry report, disciplinary authority imposed the penalty of dismissal from service on the respondent *vide* the order of penalty dated 18.03.2011.

11.6. It is the contention of the respondent that the disciplinary proceeding was initiated against him after expiry of the extended period of service i.e. post superannuation. Therefore, such a disciplinary proceeding and the consequential order of penalty, appellate order and review order are *non est* in the eye of law being *void-ab-initio*.

12. Mr. Balbir Singh, learned senior counsel appearing for the appellants, submitted that while the respondent was in service, he had committed serious irregularities. In this connection, show cause notice was issued on 18.08.2009. Thereafter, a detailed departmental enquiry was held in which the respondent had fully participated. Enquiry officer in his report dated 17.12.2011 held that out of the 20 charges, 16 were proved and 3 partly proved. He elaborated the charges which were proved against the respondent and summarised the same as under :

- a. sanctioned loans to his family members without obtaining prior approval.

- b. sanctioned loans on false certificates bearing false local addresses.
- c. unauthorisedly debited a customer's account to meet the margin requirement in the loan sanctioned to his son.
- d. disbursed various loans without completing the formalities of documentation.
- e. took educational loans as a co-borrower along with his son and daughter, without approval.
- f. disbursed loans in various accounts without obtaining documents.
- g. allowed large value debits in 49 KCC accounts after the date of credit of waiver amounts under the scheme.
- h. 9 cheques belonging to his wife and daughter were presented by him, which were later on dishonoured.
- i. took cash under acknowledgment on 9 occasions from customers of the bank but did not credit money to their account.

12.1. He further submitted that respondent would have attained the age of 60 years on 30.10.2012. In fact, this has been the consistent stand of the respondent throughout the departmental proceeding. The penalty order was issued on

07.03.2012 before the respondent had attained the age of 60 years on 30.10.2012.

12.2. Learned senior counsel also argued that it was not the case of the respondent either in appeal or in review or even before the learned Single Judge that the departmental proceeding against him was initiated after his superannuation and therefore was *void-ab-initio*. He had assailed the order of penalty on various other grounds including on merit. Therefore, the High Court was not justified in allowing the challenge of the respondent on the unpleaded ground that the departmental proceeding was initiated against him after his superannuation. This aspect was also overlooked by the Division Bench.

12.3. Referring to the stand taken by the respondent in the departmental enquiry as well as before the appellate authority that he was due to superannuate on 30.10.2012, Mr. Singh submits that the same is binding on him. In fact, appellant bank had paid subsistence allowance to the respondent even after 01.10.2010 right upto the date of dismissal from service which the respondent had accepted. Therefore, it is not open to the respondent to now contend that his service with the appellant bank had come to an end on 01.10.2010.

12.4. Learned senior counsel also referred to Rule 19 of the Service Rules more particularly to sub-Rule (2) thereof and contends that there cannot be any automatic superannuation of an officer from the service of the appellant bank. Superannuation of an officer has to be sanctioned by the competent authority under Rule 19(2) of the Service Rules.

12.5. Finally, Mr. Singh, learned senior counsel submits that the departmental proceeding against the respondent was initiated before he had retired from service. Therefore, in terms of the Rule 19(3) of the Service Rules, respondent was deemed to have continued in service of the appellant bank for the purpose of such departmental proceeding. In this connection, he has placed reliance on the decision of this Court in *SBI Vs. C.B. Dhall*¹.

13. *Per contra*, Mr. Vishwajit Singh, learned senior counsel for the respondent, submits that there is no error or infirmity in the impugned decision of the High Court.

13.1. Learned senior counsel submits that the issue involved in the present case is quite simple: whether the appellant bank

¹ (1998) 2 SCC 544

could have initiated disciplinary proceeding against the respondent after his superannuation.

13.2. He submits that respondent had completed 30 years of service in the appellant bank in the year 2003. Therefore in terms of Rule 19(1) of the Service Rules, he was due to superannuate on 26.12.2003. However, the appellant bank invoked the proviso to Rule 19(1) of the Service Rules and by recording reasons in writing extended the service of the respondent beyond 30 years from 27.12.2003 to 01.10.2010. Thereafter, no further extension of service was granted by the appellant bank. As such, the respondent's service in the appellant bank had ceased with effect from 01.10.2010.

13.3. Though appellant bank had issued notice dated 18.08.2009 to the respondent alleging irregularities and had suspended him from service on 21.08.2009, departmental proceeding was initiated against the respondent in terms of Rule 68(1) of the Service Rules only on 18.03.2011 when the charge memo was issued, which was clearly after 01.10.2010. The factum of the respondent participating in the departmental proceeding or stating that he was due to superannuate on 30.10.2012 would be of no consequence. Further, payment of

subsistence allowance by the appellant bank and acceptance of the same by the respondent would also not lead to extension of service of the respondent post 01.10.2010.

13.4. Learned senior counsel for the respondent therefore submits that the order of penalty imposed by the appellant bank on the respondent is clearly *void-ab-initio* and the High Court had rightly interfered with the same. In support of his submissions, he has placed reliance on the following decisions:

- (i) *UCO Bank Vs. Rajinder Lal Capoor*²; and
- (ii) *UCO Bank Vs. M.B. Motwani*³,

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. Having heard learned counsel for the parties and upon perusal of the materials on record, we may briefly refer to the relevant provisions of the statutes governing the service condition of the respondent.

15.1. In exercise of the powers conferred by sub-Section(1) of Section 43 of the State Bank of India Act, 1955, the Central Board of the State Bank of India has made the State Bank of India

² (2007) 6 SCC 694

³ (2023) SCC Online SC 1327

Officers (Determination of Terms and Conditions of Service) Order, 1979 (briefly 'the Service Order' hereinafter) to determine certain terms and conditions of appointment and service of officers in the State Bank of India (SBI). Order 19 thereof deals with the age of retirement. Clause (1) of Order 19 says that an officer shall retire from the service of SBI on attaining the age of 58 years or upon the completion of 30 years' service or 30 years' pensionable service if he is a member of the Pension Fund, whichever occurs first. Thus, as per clause (1) of Order 19 of the Service Order, an officer of SBI shall retire from the service of the bank on the happening of three contingencies whichever occurs first. The three contingencies are:

- (i) on attaining the age of 58 years; or
- (ii) upon completion of 30 years of service; or
- (iii) completed 30 years of pensionable service, if he is a member of the Pension Fund.

15.2. Therefore, what this provision contemplates is that an officer of SBI shall retire from service on completion of any one of the three contingencies whichever happens first. The first proviso confers a discretion upon the competent authority to extend the period of service of an officer who has either attained the age of

58 years or has completed 30 years of service or has completed 30 years of pensionable service, if it is deemed that such extension is desirable in the interest of SBI. However, the extended period of service shall not be counted for the purpose of pension.

15.3. As per clause (2) of Order 19, no officer of SBI who has ceased to be in the service of SBI by virtue of any of the contingencies provided for in clause (1), shall be deemed to have retired from the service of the said bank for the purpose of the Pension and Guarantee Fund Rules or the Pension Fund Rules unless such cessation of service has been sanctioned on retirement for the purpose of either of the aforesaid two rules.

15.4. Clause (3) of Order 19 makes it clear that in case disciplinary proceeding under the relevant rules of service has been initiated against an officer before he ceases to be in the service of SBI, the disciplinary proceeding may, at the discretion of the Managing Director, be continued after cessation of service and concluded by the authority which had initiated the same as if the officer continues in service. However, such an officer shall be deemed to be in service only for the purpose of continuance and conclusion of such proceeding.

15.5. A conjoint reading of the three clauses of Order 19 would indicate that an officer of SBI shall retire from the service of the said bank on fulfilment of either of the three conditions. However, the competent authority has the discretion to extend the period of service of such an officer, if such extension is deemed desirable in the interest of SBI though the extended period of service will not be counted for the purpose of pension. Under clause (2), no officer who has ceased to be in the service of SBI by virtue of the contingencies stipulated in clause (1), shall be deemed to have retired from service for the purpose of the Pension and Guarantee Fund Rules or the Pension Fund Rules unless such cessation of service has been sanctioned. Therefore, the sanctioning of cessation of service is only for the purpose of the aforesaid rules. Clause (3) contains the clarification that if disciplinary proceeding has been initiated against such an officer under the relevant service rules before he ceases to be in the service of SBI, the disciplinary proceeding may be continued and concluded by the authority which had initiated the same even post cessation of service of the officer. However, he shall be deemed to be in service only for the purpose of continuance and conclusion of such proceeding and not for any other purpose.

16. Now let us turn to the State Bank of India Officers' Service Rules, 1992 (already referred to as 'the Service Rules'). Preamble to the Service Rules says that the said rules have been framed by the Central Board of the State Bank of India exercising powers conferred by sub-Section(1) of Section 43 of the State Bank of India Act, 1955 to determine the terms and conditions of appointment and service of all officers in the State Bank of India. The Service Rules came into effect from 01.01.1992.

16.1. Rule 2(1) says that the Service Rules shall apply to all officers of SBI who are appointed or promoted to any of the grades mentioned in Rule 4 and also to whom any of the rules mentioned thereunder are applicable. The rules include the State Bank of India Officers' (Determination of Terms and Conditions of Service) Order, 1979 (already referred to as 'the Service Order' hereinbefore). Rule 19 deals with retirement. As per Rule 19(1), an officer shall retire from the service of SBI on attaining the age of 60 years or upon the completion of 30 years of service or 30 years of pensionable service, if he is a member of the Pension Fund, whichever occurs first. The first proviso says that the competent authority, may, for reasons to be recorded in writing, extend the period of service of an officer who has completed 30

years of service or 30 years of pensionable service, as the case may be, should such extension be deemed desirable in the interest of the bank. However, the second proviso clarifies that an officer who has attained the age of 60 years shall not be granted any further extension in service.

16.2. From a comparative analysis of Order 19(1) of the Service Order with Rule 19(1) of the Service Rules, what is discernible is that the only change introduced by the latter is in one of the conditions of superannuation i.e. the age. From 58 years it has now become 60 years. Rest of the provision has remained unaltered, including the contingencies of superannuation. Whether it is 58 or 60 years, it is only one of the contingencies of superannuation, not the sole. Before attaining the age of 58 years or 60 years, as the case may be, an officer shall superannuate from service if he has completed 30 years of service or 30 years of pensionable service. However, the second proviso has made a clarification that an officer who has attained the age of 60 years shall not be granted any further extension in service. This means that an officer can be superannuated before attaining the age of 60 years if any one of the other two contingencies are fulfilled; he may also be granted extension of

service thereafter but such extension of service cannot be beyond the age of 60 years.

16.3. Rule 19(2), on the other hand, starts with a *non-obstante* clause. It says that notwithstanding anything to the contrary in the Service Rules, no officer who has ceased to be in the bank's service by the operation of, or by virtue of, any provision shall be deemed to have retired from the service of SBI for the purpose of the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him. Thus what Rule 19(2) contemplates is sanctioning of cessation of service for the purpose of the aforesaid two rules only and for no other purpose.

16.4. Sub-Rule (3) of Rule 19 provides that in case disciplinary proceeding under the relevant rules of service has been initiated against an officer before he ceases to be in the service of SBI by operation of, or by virtue of, any of the said rules or the provisions of the Service Rules, the disciplinary proceeding may at the discretion of the competent authority, be continued and concluded by the authority by which the proceeding was

initiated in the manner provided in the said rules post cessation of service as if the officer continues to be in service; but he shall be deemed to be in service only for the purpose of continuance and conclusion of such proceeding.

17. Chapter XI of the Service Rules deals with conduct, discipline and appeal. Chapter XI comprises of Rule 50 to Rule 70.

17.1. Section 2 of Chapter XI deals with discipline and appeal. Rule 67, which is part of Section 2, provides for various categories of minor and major penalties which may be imposed on an officer for an act of misconduct or for any other good and sufficient reason to be recorded in writing.

17.2. The heading of Rule 68 which is also part of Chapter XI is *decision to initiate and procedure for disciplinary action*. Rule 68(1) says that the disciplinary authority either by itself or on a direction of the superior authority may institute disciplinary proceeding against an officer. The disciplinary authority or any authority higher than it may impose any of the penalties mentioned in Rule 67 on such an officer.

17.3. As per Rule 68(2), no order imposing any of the major penalties shall be made except after an inquiry held in accordance

with Rule 68(2). Clause (iii) of sub-Rule (2) of Rule 68 says that where it is proposed to hold an inquiry, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the officer and the articles of charge(s) together with the statement of allegations on which those are based, list of documents and witnesses relied on, copies of relied upon documents to the extent possible and the statement of witnesses shall be communicated in writing to the officer who shall be required to submit within such time as may be specified by the disciplinary authority, a written statement of his defence.

17.4. Thereafter, the procedure for conducting inquiry is laid down.

17.5. Rule 69 provides for appeal and review. As per sub-Rule (1), an officer may appeal to the appellate authority against an order imposing upon him any of the penalties specified in Rule 67 or against an order of suspension. The procedural part of such an appeal is provided in sub-Rule (2).

17.6. Rule 69(3) deals with review. Clause (i) thereof, which starts with a *non-obstante* clause, says that notwithstanding anything contained in Section 2, the reviewing authority may call for the record of the case within six months of the date of the final

order and after reviewing the case, pass such order(s) thereon as it may deem fit.

18. In *Union of India Vs. K.V. Jankiraman*⁴, this Court was examining the impact of sealed cover procedure on an employee due for promotion, increment etc. In that case, the employees were eligible for promotion but because of pending disciplinary proceeding, were subjected to sealed cover procedure. It was in that context that this Court considered amongst others the question as to what is the date from which it can be said that a disciplinary proceeding is pending against an employee. After due analysis, this Court held that it is only when a charge memo is issued to the employee that it can said a departmental (disciplinary) proceeding is initiated against the employee.

19. This issue was again considered by this Court in *Rajinder Lal Capoor* (supra). Respondent in that case was an officer of the UCO Bank. Following a disciplinary proceeding, he was dismissed from service. However, the High Court in writ jurisdiction converted the punishment of removal from service into one of compulsory retirement with effect from the date of

⁴ (1991) 4 SCC 109

superannuation. UCO Bank came up in appeal following leave granted before this Court. On examining, this Court while opining that the High Court may not have been correct in converting the penalty of removal from service to compulsory retirement, however, came to the conclusion that initiation of departmental proceeding itself was wholly illegal and without jurisdiction. The chargesheet was issued on 13.11.1998 whereas the respondent had attained the age of superannuation on or before 01.11.1996. Referring to the relevant provision i.e. Regulation 20(3)(iii) of the UCO Bank Officer Employees' Service Regulations, 1979 which created a legal fiction of continuance in service of the concerned officer post superannuation if disciplinary proceeding had been initiated prior to superannuation, such continuance of service being only for the purpose of conclusion of the disciplinary proceeding, this Court held that such a provision could be invoked only when the disciplinary proceeding had clearly been initiated prior to the respondents' ceasing to be in service. Only when a valid departmental proceeding is initiated against the officer while in service, despite his attaining the age of superannuation, the disciplinary proceeding can be allowed to be continued on the basis of the legal fiction as if he was in service.

Thus, when a departmental proceeding is continued by reason of the legal fiction, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. Reiterating the view taken in *K.V. Jankiraman*(supra), this Court held that the departmental proceeding is not initiated merely by issuance of a show cause notice. It is initiated only when a chargesheet is issued. In the facts of that case, since the disciplinary proceeding was initiated after the age of superannuation, the chargesheet, inquiry report and the order of punishment were held to be illegal and without jurisdiction by this Court and those were set aside. Consequently, all retiral benefits due to the respondent was directed to be paid.

20. Similarly in *Coal India Ltd. Vs. Saroj Kumar Mishra*⁵, this Court again reiterated the legal position that a departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued.

21. A three-Judge Bench of this Court in *Canara Bank Vs. D.R.P. Sundharam*⁶ examined the meaning and effect of Regulation 20(3)(iii) of the Canara Bank (Officers') Service

⁵ (2007) 9 SCC 625

⁶ (2016) 12 SCC 724

Regulations, 1979 which is *pari materia* to Regulation 20(3)(iii) of the UCO Bank Officer Employees' Services Regulations, 1979 in the light of the view taken in *Rajinder Lal Capoor* (supra) and held that Regulation 20(3)(iii) is a stand-alone provision. By virtue of the said provision, a disciplinary proceeding initiated by means of a chargesheet prior to the retirement of a bank employee would continue even after his retirement in view of the provision contained in Regulation 20(3)(iii). In the facts of that case, the Bench noted that disciplinary proceeding was initiated by submission of chargesheet after the retirement of the respondent. Therefore, while confirming the decision of the High Court, this Court dismissed the appeal filed by Canara Bank.

22. In the case of *M.B. Motwani* (supra), Supreme Court once again reiterated the position that a departmental proceeding is not initiated merely on issuance of a show cause notice. It is initiated only when a chargesheet is issued because that is the date of application of mind on the allegations levelled against an employee by the competent authority. In that case, it was noticed that the deceased employee had attained the age of superannuation on 31.07.1991 whereas the chargesheet was issued to him on 07.12.1991 meaning thereby that on the date of

his superannuation, no disciplinary proceeding was pending against him. That being the position, this Court dismissed the appeal filed by UCO Bank.

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 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 05.08.2003 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:

(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 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.

27. When the appellants approached the Division Bench of the High Court in letters patents appeal, the Division Bench repelled the contention of the appellants and held as follows:

11. The contention of the learned counsel for the appellant Bank that as per the Rule 19(1) of the State Bank of India Officers' Service Rules, 1992, the respondent writ petitioner was to superannuate on completion of 60 years of age, is again, not in consonance with the Rules. The relevant portion of Rule 19(1) of the aforesaid Rules reads as follows:-

"19.(1) An officer shall retire from the service of the Bank on attaining the age of sixty years or upon the completion of thirty years' service or thirty years' pensionable service, if he is a member of the Pension Fund, whichever occurs first."

A bare perusal of the Rule clearly shows that if an officer of the State Bank of India, completes thirty years of service prior to attaining the age of 60 years, he is to superannuate from service, on completion of thirty years of service, irrespective of the fact that he has not attained the age of 60 years.

12. In the case of the writ petitioner, he was made to superannuate on the date of completion of 30 years of service in the year 2003 itself, and he was again given an extension of service from 27.12.2003 to 1.10.2010. As such, by no stretch of imagination, it can be said that even in case of extension of service given to the respondent writ petitioner beyond the period of 30 years of service, he was to continue in service till he attained the age of 60 years. No other Rule has been brought on record, or to the notice of this Court to show that even after completion of 30 years of service, the officer of the Bank shall continue in service, till he attains the age of 60 years. Rule 19(1) of the State Bank of India Officers' Service Rules, 1992, is absolutely clear, without any ambiguity, wherein there is no scope of accepting the submission of learned counsel for the appellant Bank.

13. Thus, the only conclusion that can be drawn in the present case, is that the writ petitioner could not have been allowed to continue in service after 1.10.2010, in absence of any further extension of service, which admittedly was not done in the present case. In that view of the matter, we find that the

departmental proceeding had been initiated and the punishment order was passed after the superannuation of the petitioner on 1.10.2010, as the initiation of the departmental proceeding was done on 18.03.2011, and the punishment order was passed by the Disciplinary Authority on 7.03.2012, i.e., after the date of superannuation, which was not permissible in the eyes of law, in absence of any disciplinary Rules. Admittedly, no such Rules were brought to the notice of the Writ Court, or to the notice of this Court.

14. As such, we find no illegality in the impugned Judgment dated 6.9.2016, passed by the Writ Court in W.P.(S) No.3446 of 2014, holding that the departmental proceeding could not have been initiated and continued after the superannuation of the respondent writ petitioner, and allowing the writ application, quashing the order of dismissal from service passed by the Disciplinary Authority, as well as the orders of the Appellate and the Reviewing Authorities, worth any interference in exercise of the LPA jurisdiction.

28. In so far the present case is concerned, respondent was due to superannuate on 26.12.2003 apparently on completion of 30 years of service but his service was extended on 05.08.2003 from 27.12.2003 to 01.10.2010. Thus, the extended service of the respondent came to an end on 01.10.2010. The relationship of

master and servant between the appellants and the respondent came to be severed on and from 01.10.2010. The factum of receipt of subsistence allowance thereafter or the respondent declaring that he would superannuate on a later date i.e. on 30.10.2012 on attaining the age of 60 years would not make any difference to the legal and factual scenario. Therefore, it is evident that respondent was no longer in the service of SBI post 01.10.2010.

29. Attaining 60 years of service (earlier 58 years) is not the sole criterion of superannuation of an officer serving in SBI. As already noted and discussed above, it is one of the three contingencies. If any of the three contingencies are fulfilled, an officer would be superannuated. Respondent had actually superannuated from service in SBI on 26.12.2003 on completion of 30 years of service but his service was extended prior thereto on 05.08.2003 from 27.12.2003 to 01.10.2010. Post 01.10.2010 there was no further extension of service.

30. Disciplinary proceeding against the respondent was not initiated on 18.08.2009 when the first notice to show cause was issued but was initiated only on 18.03.2011 when the disciplinary authority issued the charge memo to the respondent.

31. As has been held by this Court on more than one occasion, a subsisting disciplinary proceeding i.e. one initiated before superannuation of the delinquent officer may be continued post superannuation by creating a legal fiction of continuance of service of the delinquent officer for the purpose of conclusion of the disciplinary proceeding (in this case as per Rule 19(3) of the Service Rules). But no disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on attaining the age of superannuation or after the extended period of service.

32. Even in the case of *C.B. Dhall* (supra) relied upon by the appellants, this Court while considering the purport of Rule 20B of the State Bank of India (Supervising Staff) Service Rules, 1975 held that under Rule 20B disciplinary proceeding, if initiated against an employee before he retires from service, could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceeding, the employee is deemed to have continued in service but for no other purpose.

33. That being the position, we see no merit in the appeal. Accordingly, the appeal is dismissed. Appellants are directed to

release all the service dues of the respondent expeditiously and at any rate not later than six weeks from today.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
NOVEMBER 19, 2024.**