

**WP-7993-2012**

*(ASHWANI KUMAR SHARMA Vs PUNJAB NATIONAL BANK,)*

**10-03-2016**

Shri S.K.Rao, Senior Advocate with Shri Sanjeev Chaturvedi, counsel for the petitioner.

Shri R. Pohankar, counsel for the respondents.

With the consent, finally heard.

Order dictated in open court and annexed on a separate sheet.

**ORDER**  
**(Passed on 10.03.2016.)**

**Per : Sujoy Paul J.**

In this petition, filed under Article 226 of the Constitution petitioner has prayed for setting aside the order dated 10.02.2012 (Annexure P/1) whereby the respondents have rejected the prayer of the petitioner to permit him to exercise the second option.

2. Shri Rao, learned Senior counsel for the petitioner submits that the point involved in this case is no more ***res integra***. During pendency of this petition, various High Courts have disapproved the similar action of the Banks. It is submitted that petitioner joined the services of the Bank on 02.11.1978. He was subjected to disciplinary action and was compulsory retired on 16.12.2002 after rendering more than 24 years of service. During the period when petitioner was in service, there was no pension

scheme in the nationalized Banks. After prolong discussion between employer and Union, the Government of India declared the Pension Scheme which was duly published in the Gazette on 20.9.1995. All the nationalized Banks including respondent/Bank adopted the scheme and introduced PNB Employees Pension Regulation, 1995. The employees were asked to exercise their options under the said regulation for availing the benefit of Pension Scheme. Since certain provisions of the scheme were objectionable, the Union raised the objection and large number of employees did not opt for the said scheme. However, a settlement was arrived at on 27.4.2010 between the Banks Association and Confederation of Employees whereby permitting all the Officers who were in service of the Bank prior to 29.9.1995 but retired prior to 27.4.2010 or continued in the services on the date of settlement, for exercising their second option. The Bank, vide circular dated 16.8.2010, advised the employees to exercise the second option under the Pension Scheme. However, the petitioner exercised such option, which was turn down by the impugned order.

3. Shri Rao, Senior counsel placed reliance in the judgment of Punjab and Haryana High Court passed in Civil W.P.No.2553/12 (O & M) **V.K.Vohra Vs. Central Bank of India and others**. He also placed reliance on a judgment of Andhra Pradesh High Court passed in W.P.No. 9069/11 **Sreeram Ramamurthy**

***Vs. Andhra Bank, rep. By its Chairman and Managing Director (Annexure P/11)***. It is submitted that the present petitioner is exactly similarly situated. The petitioner therein was also inflicted with punishment of compulsory retirement. The Andhra Pradesh High Court opined that the word "retirement" is wide enough to include the case of compulsory retired employees. The said judgment of writ court got stamp of approval from the Division Bench in W.A.No.905/12. The SLP filed by the Bank is dismissed by the Supreme Court on 05.09.2014.

4. Shri Pohankar, on the other hand, relied on a judgment of Calcutta High Court in the matter of ***Punjab National Bank Vs. Jyotirmay Roy (APO 284/12 with WP No.1562/10 (Annexure R/1)***. He submits that compulsory retirement is a different connotation which is not part of "retirement". However, Shri Pohankar, did not dispute that the settlement arrived at between the Bank and Confederation which is referred in the judgment of Andhra Pradesh is applicable to the present case. He did not dispute the legal proposition decided by the Andhra Pradesh High Court.

5. I have heard the parties at length and perused the record.

6. In ***Shrreeram Ramamurthy (supra)***, the Andhra Pradesh High Court has held as under :-

2. "13. It would be noticed from the above that there are four different categories of employees, who are covered by the Joint Note

and circular of the bank, which are broadly classified as:

(1) Those in the service of the bank prior to 29.09.1995 in case of Nationalized Banks/26.03.1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;

(2) Those who were in service for the same period, as aforesaid, but retired after that date and prior to the date of this Joint Note:

(3) Family of such officers who were in the service of the bank on the aforesaid dates but retired after that date and had died will be eligible for family pension;

(4) Family of such officers who were in the service of the bank prior to the dates aforesaid, but have died while in service of the bank after that date will be eligible for family pension

14. The circular of the bank dated 01.09.2010 also refers to the same criteria under clauses 1 and 2 thereof. So far as the petitioner is concerned, the first part of clause 2 of the Eligibility criteria is relevant, which is extracted, as above, provides that the

officers/workmen, who are in service prior to 29.09.1995 and retired after that date but prior to the date of Joint Note dated 27.04.2010 are eligible for pension. Since the petitioner retired compulsorily on 18.03.2009, on a plain reading of the Joint Note as well as the Circular, his case clearly falls within the first part of clause 2 of Eligibility criteria, which also satisfies para 3(a) of the Joint Note.

15. The impugned order, however, does not examine the option given by the petitioner from the aforesaid standpoint and proceeds to consider the case on the ground that the petitioner has not retired either voluntarily or on superannuation and thereby the right to give the option is denied. It is to be remembered that the retirees, who qualify within any of the four categories, as mentioned above, would be eligible to opt for pension. Clause 2 under the circular, therefore, covers three different categories but the respondents have apparently examined the petitioner's case, as if he must satisfy all condition of

clause 2 whereas, in fact, it is sufficient if any retiree satisfies any one of the criteria under the said clause 2. The impugned order rejecting the petitioner's option on the said ground is, therefore, clearly erroneous on a plain reading of the circular dated 01.09.2010.

16. Dr. Lakshmi Narasimha, learned counsel for the respondent - bank, however, defended the action of the bank on the ground that such retirees, who have retired compulsorily, were not included in the scheme, as there is no reference to such retirees. I am, however, unable to appreciate the said contention in view of the fact that, firstly, the Joint Note as well as the circular refers to the retirees from the bank and the word retiree in generic term includes all categories of retirees. Restricting the meaning of the said word only to those, who retired voluntarily or on superannuation, is not only against the object and purpose of the agreement under the Joint Note and the circular but would also amount to reading something else therein. Secondly, the definition of

retirement, as extracted above, covers all cases of cessation of service. Hence, the word 'retired' used in the Joint Note and circular has to be understood broadly, as per definition. I am, therefore, of the view that the Joint Note and the circular apply to all the retirees and if the contention of the learned standing counsel for the respondent - bank is accepted, it would amount to creating and classifying the retirees into two different classes viz. those, who retired on superannuation or voluntarily and the other category of those, who retired compulsorily, which would be violative of [Article 14](#) of the Constitution of India.

17. In addition to the aforesaid, a clear indication of the intention of the bank is available from the fact that the first option under the pension scheme was available to all the retirees including those, who were compulsorily retired and that is why the counter affidavit states in para 6 that the petitioner has not chosen to opt for the pension and preferred to continue as member of

contributory provident fund. Further, para 9 states that Regulation 33 of the Regulations is not applicable to the petitioner, but it applies only to those, who were pension optees by the date of imposition of penalty of compulsory retirement. The averment, as above, itself would show that such of those, who suffered compulsory retirement but who opted for pension by the date of imposition of penalty, are eligible under the pension scheme. Evidently, the respondents cannot discriminate one such set of retirees on penalty of compulsory retirement from the other set of retirees. Moreover, the second option provided under the circular, based on the Joint Note, referred to above, was applicable to such category of retirees, who qualify within one of the four criteria. Petitioner being clearly falling within the said criteria, the impugned order rejecting his case is clearly unsustainable.

The writ petition is accordingly allowed setting aside the impugned order. The respondents shall reconsider the option

exercised by the petitioner under the circular dated 01.09.2010 read with the Joint Note dated 27.04.2010, referred to above and pass appropriate orders in accordance with the said circular within a period of two (2) months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.â.

***(Emphasis supplied)***

7. This judgment is upheld by Division Bench by a detailed order. This is not in dispute between the parties that the similar regulation, scheme and letters which were considered by Andhra Pradesh High Court are applicable to the present case. This is also clear that the employee Sreeram was also compulsory retired. In view of the judgment of Andhra Pradesh High Court which is not disturbed till the Supreme Court, I find no reason to put the petitioner to a comparatively different position. Resultantly, I deem it proper to follow the course adopted by the Andhra Pradesh High Court in ***Sreeram (supra)***. The SLP against said order is dismissed by the Supreme Court.

8. Resultantly, the impugned order dated 10.2.2012 (Annexure P/1 is set aside. The respondents shall reconsider the option exercised by the petitioner under the relevant circular and joint note and pass

appropriate orders in accordance with law within a period of two months from the date of receipt of copy of this order.

9. The petition is **allowed** to the extent indicated above.

**(SUJOY PAUL)**  
**JUDGE**