
(2008) 02 PAT CK 0146
In the Patna High Court
Case No : LPA No. 686 of 2007

Amitabh

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 2 PLJR 377

Hon'ble Judges : Rajesh Balia, C.J;Barin Ghosh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The appeal is directed against the order of the learned Single Judge dated 6th July, 2007 dismissing the writ petition filed by the writ petitioner-appellant.

2. The writ petitioner-appellant is a Bank employee in the Scale-II and had been posted as Dy. Manager in the Zonal Office of the State Bank of India at Bhagalpur. The petitioner has been rated "Excellent" in the Annual Appraisal Report for the period 1992-93, but has been rated "good" for the succeeding year 1993-94. In 1994-95 & 1995-96, he has again been rated as "Excellent". An "Excellent" remark is weighed at 100/100 and a "good" remark is weighed at 50/100. Since for the purpose of promotion, preceding three years' Annual Appraisal Reports are to be considered and the promotion being on merit, the petitioner's case on merit went down in order because of difference of the three years' Annual Appraisal Reports for he had one "Good" and two "Excellent" remarks which gave him 250 marks out of 300 marks.

3. In these circumstances the petitioner had filed the writ petition being CWJC No. 5543/2002 stating that grading the petitioner as "Good" was an adverse remark for him and as such should have been communicated to him. The grading of "Good" has been taken into consideration while considering his case for promotion. Hence, promotion exercise was vitiated because of taking into

consideration the uncommunicated adverse remarks.

4. The said writ petition came to be disposed off on 18.12.2003 with the following observations:-

"True it is that whenever a grade "Good" is given to a particular officer, the same is not required to be communicated because only those entries are required to be communicated to the employees/incumbents which are otherwise adverse. In a case where the "Good" entry is acting as adverse against the incumbent then though the entry would be good but it would be deemed to be an adverse entry. In the present case the question whether such adverse entry was required to be communicated to the petitioner or not will have to be considered by the respondents while considering the representation/appeal of the petitioner."

5. Pursuant to the aforesaid direction, the petitioner was communicated that having evaluated his report for 1993-94 at three levels based on the marks which the petitioner got under various heads, the grade "Good" was maintained and, therefore, the grading of the remarks was not to be faulted.

6. This led to filing of another writ petition being CWJC No. 11011 of 2004, out of which this appeal has arisen.

7. A writ in the nature of certiorari was sought for quashing the sudden and without reason downgrading the petitioner to "Good" grade from "Excellent" grade, in Annual Appraisal Report of the year 1993-94, which resulted in reducing his marks in merit level though the petitioner got 100 marks out of 100 marks and was rated as "Excellent" in previous and subsequent years, mandamus was also sought that he should be promoted to Scale-II since 1994 with all consequential benefits.

8. The writ petition has been dismissed by the learned Single Judge finding that after decision of the last writ petition, appellant's case has been scrutinized at three levels and his result has remained unchanged as he has been evaluated "Good", even thereafter.

9. It has been contended before us that since appellant has been rated in the year immediately prior to 1993-94 and years after 1993-94 as "Excellent", his "grading as "Good" in the year,1993-94 has affected his chance of promotion because his position vis-a-vis other officers junior to him had been adversely affected and they have stolen marched over him. For this reason, it is contended that, the award of gradation "Good", so far he is concerned, is adverse to him and it ought to have been communicated to him. Having not communicated such remarks to him but taking into consideration such remark while considering his case for promotion is in breach of principles of natural justice. His case for promotion ought to have been -considered without taking into account the purported adverse remarks of year 1993-94.

10. This contention fails to impress us.

11. Each year of appraisal of an incumbent about his performance during the year is independent and is not influenced by the appraisal for the other period nor such appraisal of other periods can be imported as a matter of course to maintain the continuity of the gradation. It is also true that the annual appraisal reports are the expression of subjective satisfaction about the performance of incumbent by his superior and excepting the case of mala fide or where the remarks are adverse to the incumbent without any existing materials, which is the only requirement for reaching subjective satisfaction, cannot be subject to judicial review.

12. What is meant by an adverse remark, has been accepted by the Supreme Court in the case of Union of India and Anr. vs. S.K. Goel and Ors. reported in 2007(3) PLJR (SC)125 in which the court has considered the necessity of conveying the adverse remarks to the incumbent. It was a case in which the reviewing authority had downgraded the remarks given by reporting officer and the question had been raised whether such downgrading by the reviewing authority of the remarks either by reporting officer, or revisional officer amounts to adverse remarks requiring communication to an incumbent. The court said-

"...the downgrading still meets the benchmark and therefore, merely because certain persons have been assessed by the DPC to be better than the respondent, did not imply that he should have been communicated his grading."

13. The present case is on much higher footing. It is not a case where appellant's annual appraisal report has been downgraded by the reviewing authority against the gradation report by the reporting authority. He has actually been graded as "Good", therefore, unless it can be said that this gradation was below the benchmark, necessary for his consideration for promotion, it cannot be held to be adverse merely because ultimately during the selection process some officers were found better than him and they marched head of him.

14. The promotion policy before us makes it clear that the appellant's gradation as "Good" does not fall below the bench mark, necessary for including the appellant's case for consideration, while considering promotion of officers. The selection process for promotion to MMGS IInd reveals that in the first place the incumbent must fall within the basket of eligible. candidates. It is in this context that on considering the appellant's case he was kept within the consideration zone. For next step for appellant's inclusion for consideration, it is required that he should be in the zone of consideration. Once he comes into the eligible zone of consideration, it must further satisfy that amongst eligible persons he should not have been declared unfit for promotion. It takes us to find meaning of the expression "unfit for promotion". The same has been defined that those who have got 40% marks fixed for evaluation under normal channel are fit for promotion. The appellant's gradation "Good" results in marking at 50% i.e. above 40%. Therefore, his consideration is not excluded because he was not found fit for promotion. The appellant entered into the portals of ultimate process of selection before the authorities assigned the task of processing the case of the

candidates coming before it for consideration on their respective merits and then making its recommendation.

15. Having reached that stage, if the selecting authority has not found his case to be meritorious to put him in the list for being appointed, because other persons junior to him have been found more meritorious than him, he cannot have any grievance against annual appraisal report because others have got more marks. A "good" gradation therefore cannot be considered as adverse in the case of petitioner.

16. We are, therefore, of the opinion that there is no reason in the order under appeal. Appeal fails and is dismissed.