

(2012) 03 PAT CK 0110
In the Patna High Court
Case No : CWJC No. 3339 of 1999

Bipin Krishna Singh	Vs	APPELLANT
The State Bank of India and Others		RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 4 PLJR 182

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Aditya Narain Singh, for the Appellant; S.D. Sanjay, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for the following reliefs:-- (i) For issuance of an appropriate order, direction or writ in the nature of mandamus commanding the respondents to include the name of the petitioner in the zone of selection for promotion to Senior Manager Grade Scale-V (SMGS-V) with effect from 1.11.1998 and consider the case of the petitioner and grant promotion to SMGS-V.

(ii) For a direction to the respondents to maintain transparency and consider the case of the officers of SMGS-IV for promotion to SMGS-V only on merit consideration and furnish/disclose reasons for not including the name of the petitioner in the zone of selection.

(iii) For a direction to the respondents to desist from acting arbitrarily and in particular refrain from harassing and penalizing the petitioner for his uprightness and uncompromising stand in safeguarding the interests of the Bank.

(iv) For any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

Subsequently the petitioner filed I.A. No. 896 of 2010 on 29.1.2010 for amendment in the relevant portion by way of adding another relief which is as follows:-- (i) For setting aside the order communicated vide letter no. AGMIV/23/ST/5072/316 dated 22.11.2000 (Annexure-1 to I.A.) by which the appellate authority observed that "there is no need to change the earlier decision at this juncture."

2. Learned counsel for the petitioner stated that he was the direct appointee as Probationary Officer in the Giridih Branch of State Bank of India on 23.10.1979 and after successful completion of his probation the petitioner was confirmed in Junior Management Grade Scale-I with effect from 23.10.1981. It was also stated by learned counsel for the petitioner that when the occasion of promotion arose the procedures prescribed for promotion were not followed and the persons joining with petitioner were promoted and now they have gone into top management post of Chief General Manager, whereas the persons junior to the petitioner were also promoted and now they are on the post of Deputy General Manager, whereas the petitioner was left in Scale-IV as Chief Manager in Senior Management Scale.

3. Learned counsel for the petitioner submitted that Circular dated 18.6.1991 (Annexure-A) provided criteria for promotion, but the respondents could not show any ground for non-consideration of petitioner in the zone of selection in their counter affidavit, specially paragraph-8 thereof. There was nothing against the petitioner nor the respondents ever pointed out any defect in the petitioner's case, although opportunity was to be given to the aggrieved person to explain the adverse entry, if made against him, by communicating it to him and the absence of such opportunity is clearly arbitrary violating Article 14 of the Constitution of India. In this regard, learned counsel for the petitioner relied upon a decision of the Apex Court in case of Dev Dutt vs. Union of India and Others, reported in (2008) 8 Supreme Court Cases 725.

4. Learned counsel for the petitioner also averred that he had filed a representation before the Deputy General Manager on 13.3.1999 and it was treated by the authorities as an appeal and was disposed of on 22.11.2000 (Annexure-1 to I.A.) during the pendency of this writ petition. It was also claimed by learned counsel for the petitioner that in the year 2003 he was called to appear at the written examination for promotion and was again called for interview in the year 2009, but the petitioner declined to participate in the proceeding on all such occasions as it was apprehended that his claim under this writ petition might be adversely affected under the doctrine of waiver. In this regard, he relied upon a decision of the Supreme Court in case of Director General, Directorate General of Doordarshan and Others Vs. Anand Patwardhan and Another, .

5. Learned counsel for the petitioner argued that nowhere in the Circular of the Bank dated 18.6.1991 (Annexure-A) it was stated that seniority will be ignored. Hence, he claimed that weightage has to be given to seniority unless otherwise

prescribed in Rules and the authorities violating the said principle had committed a wrong, which has to be corrected. In this regard, learned counsel for the petitioner relied upon a decision of the Supreme Court in case of R.B. Desai and Another Vs. S.K. Khanolkar and Others, .

6. Learned counsel for the petitioner also argued that the petitioner had never received any communication either before 1.11.1998 or thereafter regarding his below benchmark rating awarded by the reporting and review authorities. Furthermore, the result never disclosed the cut-off marks and marks obtained and the authorities produced papers only before this court not showing them to petitioner or his counsel, which according to him is clearly illegal, arbitrary and perverse. In this connection learned counsel for the petitioner relied upon two decisions of the Supreme Court in case of C.P. Kalra Vs. Air India through its Managing Director, Bombay and Others, and in case of Haryana State Warehousing Corporation Vs. Jagat Ram and Another, .

7. On the other hand, learned counsel for the respondents stated that petitioner claimed promotion from Scale-IV to Scale-V claiming to be fully eligible. Rule 17 of the State Bank Officers' Service Rules is the enabling provision for promotion based on policy framed by the Executive Committee or Board of Directors, State Bank of India and accordingly Policy dated 18.6.1991 (Annexure-A) was framed by the authorities concerned.

8. Learned counsel for the respondents submitted that such promotions are merely on merit basis and is not time bound promotion and it is made on All India Basis after evaluation of merits by High Level Evaluation Committee. It is only when a candidate with four years service as officer in Senior Management Group Scale-IV comes under the zone of selection on the basis of marks, he is called for interview for being promoted. Learned counsel for the respondents also submitted that petitioner became eligible only in November, 1998 when he completed four years of service and hence he could have been considered only in 1999 and onwards.

9. Learned counsel for the respondents averred that the cut-off marks for 1999-2000 was 158.75; for 2000-2001 it was 159.17; for 2001-2002 it was 159.17; and for 2002-2003 also it was 159.17 but the petitioner scored only 140.08 marks; 141.17 marks; 145.33 marks and 148.00 marks respectively in those years. The merit list and list of marks were produced by learned counsel for the respondents in court and stated that petitioner was not entitled to promotion and it was considered at the highest national level and hence there was no scope of any malice against the petitioner.

10. Learned counsel for the respondents further stated that from 2004 written test started in the Bank in question as per its subsequent Policy, in which the petitioner never appeared till the year 2007 and hence the petitioner was never denied promotion wrongly, rather it was as per the scheme and policy of the Bank and the merit of the candidates in view of severe competition among the

officers of the Bank.

11. Lastly learned counsel for the respondents argued that promotions are generally made on the basis of merit-cum-seniority or on the basis of seniority-cum-merit, but in the instant case there is no mention of seniority rather promotion according to the Policy has to be made only on the basis of merit due to the nature of works for the Higher Management Group in the Bank. Hence, he submitted that the claim of the petitioner is absolutely frivolous and is fit to be rejected.

12. Considering the averments made by learned counsel for the parties and the materials on record it has become apparent that the promotion in question, namely from the post of Senior Management Group Scale-IV to the post of Senior Management Group Scale-V has to be made only on the basis of merit among the candidates, who had completed four years service as officers in Senior Management Group Scale-IV. In view of the aforesaid Rules prescribed in that regard the case law relied upon by learned counsel for the petitioner in case of R.B. Desai and Another (supra) is not applicable to the facts and circumstances of this case.

13. It also transpires from the materials on record that the officers coming under the aforesaid zone of selection were being called for interview by the authorities every year as per the Policy dated 18.6.1991 for being promoted. The petitioner having completed four years as officer in Senior Management Group Scale-IV in November 1998 became eligible for interview only in the year 1999, in which he admittedly appeared for the first time, but was not selected for promotion.

14. So far the question of interview is concerned, the respondents have produced the mark-sheets and merit list in court which showed that the petitioner appeared in such interview for promotion in the years 1999-2000, 2000-2001, 2001-2002 and 2002-2003, but in all the aforesaid four years he could not get even the cutoff marks fixed by the authorities and hence he was not entitled for any such promotion. From the aforesaid fact it is also apparent that even after filing this writ petition on 7.4.1999 the petitioner went on appearing in the interview every year till 2002-2003, but the said fact has been concealed by the petitioner.

15. The petitioner has claimed that no notice or information had been given to him with respect to marks obtained by him and the rejection of promotion due to not getting the cut-off marks. But the fact shows that after not succeeding in the year 1999-2000 he again appeared for promotion in the next year i.e. 2000-2001 and again not succeeding he appeared in the interview in 2001-2002 in which he also not succeeded and he appeared in interview in the year 2002-2003. This clearly shows that the petitioner had full knowledge and information about his failure in the interview due to getting marks much less than the cut-off marks for all the aforesaid four years.

16. In the abovementioned circumstances, the claim with respect to absence of

any notice of information raised by the petitioner is proved to be factually wrong and hence the case laws relied upon by learned counsel for the petitioner in case of C.P. Kalra (supra) and Haryana State Warehousing Corporation and Others (supra) are not applicable to the facts and circumstances of this case. Furthermore, the petitioner has also miserably failed to show any act of violation of Article 14 of the Constitution of India nor any doctrine of waiver is applicable in the instant matter. Hence, the reliance of learned counsel for the petitioner on the decisions of the Apex Court in case of Dev Dutt (supra) and in case of Director General, Directorate General of Doordarshan & Ors. (supra) do not in any way affect the instant case. Considering the entire matter as aforesaid, the petitioner has failed to show or prove that any illegality has been committed by the authorities concerned in his case. Accordingly, this court does not find any merit in this writ petition, which is accordingly dismissed.