

(2007) 02 DEL CK 0003

In the Delhi High Court

Case No : Writ Petition (C) No. 12280 of 2004

Canara Bank

APPELLANT

Vs

Mr. V.K. Grover and Another

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2007) 140 DLT 194 : (2007) 3 LLJ 215

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : V.K. Rao and Ayushya Kumar, for the Appellant; Inderjit Singh, for the Respondent

Judgement

Hima Kohli, J.—By way of the present petition, the petitioner seeks to assail the order dated 28th February, 2004, passed by the Learned Central Government Industrial Tribunal-cum-Labour Court wherein it was held that the respondent applicant therein, was entitled to stagnation increment.

2. The brief facts necessary to dispose of the present petition are as follows. The respondent was appointed in the erstwhile Lakshmi Commercial Bank Limited, as Clerk on 4th September, 1972. He was promoted as Head Clerk on 11th November, 1980 and then to the post of Special Assistant on 11th November, 1981. The respondent was then promoted to the officer cadre on 7th January, 1983. Thereafter, the erstwhile Lakshmi Commercial Bank was amalgamated with the petitioner bank w.e.f. 24th August, 1985. Accordingly, w.e.f. 24th August, 1985, the respondent became an employee of the petitioner bank at the officer cadre. Vide order dated 19th September, 1986, the respondent was transferred to the Sikanderabad Branch of the petitioner bank situated in U.P. However, the respondent did not join at the said branch and was subsequently transferred to the Vishakhapatnam branch in 1988. On 30th May, 1988, the respondent made a representation to the petitioner bank for his retention at Delhi due to his family circumstances. Pursuant to the petitioner bank's refusal to retain the respondent

at Delhi, the respondent again made a representation dated 30th November, 1988 requesting to revert him back to the cadre of workman. The competent Authority of the petitioner bank granted permission to revert the respondent in the clerical cadre, vide proceedings dated 3rd February, 1989 upon the respondent's acceptance of the terms and conditions of such reversion, vide his acceptance letter dated 3rd January, 1989.

3. After reversion, the respondent was fitted at the basic pay scale of Rs. 2,715/- which was the basic pay at the 19th stage of 20 years span of clerical scale of pay i.e. at which he would have reached had he continued as a clerk from the date of his appointment w.e.f. 4th September, 1972. The basic pay scale of the respondent became Rs. 2835/- w.e.f. 1st September, 1989 which was subsequently revised to Rs. 2,860 w.e.f. 1st January, 1990, in terms of the revised clerical pay scale under the Supplementary Settlement dated 29th June, 1990, which was the maximum in the clerical cadre. The respondent claimed that he became entitled to get the first stagnation increment of Rs. 120/- from 1st September, 1992, i.e. on completion of 3 years of service after 1st September, 1989 in terms of the Fifth Bipartite Settlement dated 10th April, 1989.

4. The abovementioned claim of the respondent was declined by the petitioner, vide its letter dated 21st January, 1993, against which the respondent made an application before the Central Government Industrial Tribunal-cum-Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947. The respondent prayed for payment of a sum of Rs. 3,737.53 along with interest and the said claim of the respondent was allowed by the impugned order dated 28th February, 2004

5. During the course of arguments, learned Counsel for the petitioner submitted that the Clause 4(B) of the 5th Bipartite Settlement dated 10th April 1989, which provides for a stagnation allowance of Rs. 120/- for the clerical staff, on reaching the maximum in their scales of pay, and on the basis of which the respondent claimed stagnation allowance, was not applicable to the respondent in view of the Note appended to the said clause. The extract of Clause 4(B) and the Note are extracted as below:

4.(B) STAGNATION INCREMENTS : Both the clerical and the subordinate staff shall be eligible for three stagnation increments at the rates and frequencies and subject to the terms and conditions as enumerated below. The clerical and the subordinate staff, on reaching the maximum in their respective scales of pay shall draw stagnation increments at the rate of Rs. 120/- and Rs. 50/- each and at frequencies of three years and two years respectively from the dates of reaching the maximum of their scales, as aforesaid.

NOTE : Stagnation increments would not be given to an employee who at any time after the commencement of the Settlement dated 8th September, 1983 and after being offered and/or selected for promotion, refuses to accept such promotions.

6. Learned Counsel for the petitioner submitted that since the respondent was

promoted to officer cadre, and at his own request, was again reverted back to clerical cadre, he ought not to be allowed to take benefit of his own fault. It was further submitted that had the respondent not applied for reversion to the clerical cadre, and had he continued at the post of an officer, he would have automatically got entitled for further promotion and there would not have been any question of stagnation. Reliance was placed on letter dated 21st January, 1993 addressed by the Manager of the petitioner bank to the respondent wherein it was stated that in view of the Head Office Guidelines, the respondent was not eligible for any stagnation allowance, as he had voluntarily got himself reverted from the officer cadre to the clerical cadre. Lastly, it was submitted that if the order dated 28.2.2004 is not set aside, it will amount to upsetting the Bipartite Settlement in question and might have far reaching financial ramifications on the members of the Indian Banks Association, including the petitioner herein.

7. Per contra, learned Counsel for the respondent submitted that the Note appended to Clause 4(B) of the 5th Bipartite Settlement which provides for stagnation allowance, is not applicable to him. It was stated that the said Note bars only such employees from claiming any stagnation allowance, who have been offered and/or selected for promotion and have refused to accept such promotion after the commencement of Settlement dated 8th September, 1983. However, the counsel for the respondent stated that as the respondent was promoted to the officer cadre on 7th January, 1983, i.e. before 8th September, 1983, the said Note is not applicable to him. It was also submitted that even otherwise, the respondent was not offered/selected for any promotion after commencement of the Settlement dated 8.9.1993, and Therefore, the Note had no application to his case. Learned Counsel for the respondent further stated that it was only after the respondent had worked for a period of six years at the post of an officer w.e.f. 7.1.1983, that he sought reversion in the year 1989, and was Therefore not covered by the said Note.

8. I have heard the counsels for both the parties and have also perused the records. The whole petition revolves around interpretation of Clause 4(B) of the 5th Bipartite Settlement and the Note appended thereto.

9. A bare perusal of the abovementioned clause would show that that the clerical and the subordinate staff, became entitled to stagnation increments on reaching the maximum in their respective scales of pay, at a frequency of three years and two years respectively from the dates of their reaching the maximum of their scales. In this regard, there is no dispute that on 1st September, 1989 the respondent reached his maximum pay scale for the clerical cadre when his salary was revised to Rs. 2,835/-. So far as the Note is concerned, it stipulates the following two conditions for non-entitlement to the said stagnation increments:

a. that an offer and/or selection for promotion should have been made to the employee after the commencement of the Settlement dated 8th September, 1983, and

b. that the employee concerned should have refused to accept promotion on such an offer and/or selection.

10. Now the issue that needs to be examined is that whether the said Note is applicable to the respondent or not. In other words, what needs to be examined is that whether the aforesaid conditions are fulfilled by the respondent or not. Admittedly, the respondent was promoted to the cadre of officer on 7th January, 1983, i.e. prior to 8th September, 1983. It is also an admitted position that the respondent did not refuse the promotion offered and accepted it on 7.1.1983. In fact, he even worked on the said post of an officer for a period of 6 years. It was only thereafter, that the respondent sought reversion and was posted back in the clerical cadre, vide order dated 3.2.1989. Thus, as the respondent was not offered/selected for promotion after 8.9.1983, the question of his having refused to accept such an offer and/or selection did not arise.

11. What follows from the aforesaid facts is that the respondent does not fulfill any of the above-mentioned two conditions so as to make the said Note applicable to him and thus, disentitle him to the stagnation increment. He was offered a promotion before 8th September 1983, and he did not refuse it. Clause 4(B) of the 5th Bipartite Settlement is silent in respect of employees who had sought reversion after being promoted to a particular cadre. The arguments as canvassed by the learned Counsel for the petitioner is misconceived and cannot be accepted. Therefore, the benefit of stagnation increment cannot be denied to the respondent.

12. In view of the above discussion, and in view of the facts and circumstances of the present case, it is held that the impugned award suffers from no infirmity and there is no reason to interfere with the same. It is, however, clarified that the decision has been rendered in the present case, keeping in view the peculiar facts and circumstances thereof and the same shall not be treated as a precedent in any other case. The writ petition stands disposed of. The parties are left to bear their own costs.