
(1964) 04 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 192 of 1963

Chartered Bank

APPELLANT

Vs

Central Government Industrial Tribunal, Calcutta

RESPONDENT

Date of Decision : 08-04-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 7A

Citation : 68 CWN 730 : (1967) 2 ILR (Cal) 409

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The Petitioner carries on the business of banking, inter alia, at No. 4, Netaji Subhas Road, Calcutta and also has a sub-branch at Chowringhee. On or about May/June, 1961, the Petitioner decided to appoint some new assistant officers at the Chowringhee sub-branch. A notice dated June 2, 1961, was issued inviting applications for appointment to these posts, from amongst its existing clerical staff possessing the qualifications set out in the notice. As a result of such notice, the Petitioner received thirty applications from its existing clerical staff. From amongst the Applicants, four persons were selected and appointed-- N.C. Manna, P.G. Dey and P.K. Bhattacharya as assistant officers with a probationary period of six months and A.K. Sen Gupta as an assistant officer with a probationary period of five years. With these persons, the Bank has entered into agreements, copies whereof are included in annex. "A" to the petition. Thereafter, Respondents Nos. 2, 3, 4 and 5 raised a dispute about the appointment of the aforesaid persons to the posts of assistant officers, claiming, inter alia, to be better qualified for appointment to the said posts. They also raised the contention that by appointing the above-named four persons the Bank had superseded the said Respondents and such supersession was done under motivation of victimisation and favouritism and was in violation of the provisions of para. 529 of an award made pursuant to a reference made by the Central Government by Notification No. SR 036, dated January 5, 1952, popularly known and hereinafter referred to as the "Sastry Award". Thereafter, conciliation

proceedings were started before the Conciliation Officer (Central) who published a report dated December 14, 1961, stating that conciliation efforts had failed. Upon perusal of the report, the Government of India did not consider the dispute as a fit one to be referred for adjudication under the Industrial Disputes-Act. Sometime thereafter, however and the reason is not very evident, an order was made on July 20, 1962, referring an industrial dispute for adjudication by the Central Government Tribunal in Calcutta, for determination of the following issue:

Whether in the matter of appointment as assistant officers, the supersession of Sarvashri K.G. Das, R.N. Nandy, K.N. Chakravarty and A. Mukherjee, clerks in the Chartered Bank, Calcutta, by Sarvashri Asoke Kumar Sen Gupta, P.G. Dey and P.K. Bhattacharya of the said Bank was justified and if not to what relief Sarvashri K.G. Das, R.N. Nandy, K.N. Chakravarty and A. Mukherjee are entitled?

2. The Respondent No. 1 heard the matter and made an award on February 27, 1963. A copy of the award is annexed to the petition and marked with the letter "B". It was held that the supersession of K.G. Das, R.N. Nandy, K.N. Chakravarty and A. Mukherjee by the appointment of A.K. Sen Gupta was not justified. It was further held that the supersession of K.G. Das by appointing P.G. Dey and P.K. Bhattacharya was also not justified. It was directed that K.G. Das should be appointed as an assistant officer in the place of A.K. Sen Gupta and that A.K. Sen Gupta should not be continued as an assistant officer unless all clerks senior to him and who are qualified and fit are promoted as assistant officers. It was directed that K.G. Das should be paid his salary on the basis as if he was an assistant officer with effect from the date on which P.G. De, P.K. Bhattacharya and A.K. Sen Gupta took over as assistant officers. In this application the said award is challenged.

3. Before I consider the award and the grounds upon which it is challenged, it will be necessary to state some other facts. The question of making certain appointments as assistant officers in the Chowringhee branch of the Petitioner Bank had been raised since 1960. Certain correspondence had between the Bank and its head office at London, are annexed to the affidavit of I.G. Thomson affirmed on January 15, 1964. These were also placed before the Tribunal; Annexure "F" shows that on February 15, 1961, Mr. Thomson, Manager of the Bank, was writing to the London head office stating that upon inspection of the Chowringhee sub-branch he was advised that if the volume of savings accounts business continued to increase as it was doing, it would be necessary to appoint an additional probationary assistant. He was informed that over the past year the volume of business at the Chowringhee sub-branch had increased considerably; the number of savings deposit accounts had risen by over 3000 and the average number of vouchers processed daily showed an increase of 26%. As a result, the two covenanted officers at the sub-branch had found it difficult to give to their constituents their personal attention and time which was so necessary if this expansion was to continue. It was recommended that the establishment of the sub-branch should be strengthened by the appointment of an assistant officer,

who would relieve the covenanted officers of a portion of their routine duties. Finally, it was pointed out that at the Chowringhee sub-branch there was a young man by the name of Asoke Kumar Sen Gupta, who was "most suitable for promotion to the rank of probationary assistant". Approval was asked for his appointment as a probationary assistant. Sanction was also asked for the appointment of several other assistants. The London head office approved of the step. On June 2, 1961, the Petitioner issued a notice calling for applications from suitable members of the clerical staff for appointment as assistant officers. The notice, *inter alia*, stated as follows:

Applications will be received from members of the clerical staff who have passed at least Part I of the Institute of Bankers, or younger members who have not passed this examination but who hold a University degree in Banking, Commerce or allied subjects. However, consideration will also be given to applications from members of the staff who do not possess these qualifications but whose ability and experience may fit them for the position.

All appointments are of course subject to the approval of the Head Office.

4. Thirty applications were received in response to the said notice from the clerical staff. These applications were sent to the heads of the various departments under whom the clerks were working and the heads forwarded the applications with their recommendations. All the said thirty applications were scrutinised by the Accountant, who selected ten of them whom he considered suitable for promotion as assistant officers. The Manager Mr. Thomson then went through the records of all the thirty Applicants in consultation with the Deputy Manager and agreed with the view that the ten persons selected by the Accountant were the most suitable candidates out of the thirty. After considering the case of these ten persons and looking into their records, Mr. Thomson selected four of them and appointed N.C. Manna, P.G. Dey and P.K. Bhattacharya as assistant officers and A.K. Sen Gupta as probationary assistant officer. Agreements were entered into with all these appointees. Before I proceed further it will be necessary to set out here a tabular statement showing the respective age and qualifications of these four persons together with that of K.G. Das.

Name Age Educational qualifications Experience

1. Nirmal Chandra Manna 45 Y 11 M Matriculation 25Y 11M
2. K.G. Das 38 Y 3M B. Com., Part I, Indian Institute of Bankers" Examination 18Y 3M
3. P.G. Dey 43 Y 5M M.A. Part I, Indian Institute of Bankers" Examination 15Y 5M
4. P.K. Bhattacharya 34 Y 4M B. Com., Parts I and II, Institute of Bankers" Examination 14Y 4M
5. A.K. Sen Gupta 23 Y 8M B. Com., Govt. Commercial Course Final Examination with Gold Medal for Economics 11 M

5. Before me it was conceded on behalf of the contesting Respondents that the award, in so far as it directed that A.K. Sen Gupta should not be continued as an assistant officer and not given promotion for a specified period of time, was in excess of the reference, which only related to the justification or otherwise of the supersession. The real dispute, it emerged, was in respect of K.G. Das. It was alleged that he should not have been superseded by A.K. Sen Gupta. It was argued that here was K.G. Das who was senior in age, being more than 18 years in service, who had a better educational qualification and yet he was allowed to be superseded by A.K. Sen Gupta who was a young man and who had been only 11 months in service and whose educational qualification was inferior. It was alleged that this supersession was the result of victimisation, because K.G. Das was at one time the secretary to the union of the workmen of the Bank. It was stated that, by an agreement between the Petitioner and its workmen, the Petitioner had agreed to abide by the provisions of the Sastry Award and it was argued that there was a violation of its provisions in superseding a senior officer by the appointment of a much junior person who had no comparable educational qualification. It was urged that this was a case of victimisation and favouritism. Before I proceed to consider, the award, it will be necessary to consider the provisions of the Sastry Award. It is admitted on behalf of the Petitioner that the Sastry Award had been accepted by the parties and was binding. The genesis and history of the Sastry Award has been lucidly set out in a Supreme Court judgment *Punjab National Bank v. Their Workmen* (1961) 1 I.L.J. 10. Briefly speaking, the history is as follows: Disputes between the banks and their employees started as long ago as June, 1949, when the "Sen Tribunal" was appointed. This Tribunal was called upon to deal, inter alia, with the problem of supervisory staff employed by the Indian banks. After an exhaustive enquiry it made its Award, but on an appeal to the Supreme Court the said Award was set aside in 1951. Thereafter, Act 11 of 1951 was passed as a temporary measure for freezing certain provisions of the said Award, in order to prevent the spread of the prevailing unrest amongst the bank employees. The said dispute was then referred by the Central Government to the "Sastry Tribunal" in January, 1952. This Tribunal held an elaborate enquiry and made its award which was published on April 20, 1953. Appeals were preferred by the banks and their employees against the said Award before the Labour Appellate Tribunal and on April 28, 1954, the Appellate Tribunal substantially confirmed the recommendations and directions of the Sastry Tribunal with certain modifications. In these arbitration proceedings 121 banks were concerned. After the decision of the Labour Appellate Tribunal was pronounced, the Central Government made certain modifications in the said decision and that led to the appointment of a Commission of Enquiry on the five points referred to it. On July 25, 1955, the Commission submitted its report and in the terms of the said report, Parliament enacted a statute, being Act 41 of 1955 which was in operation for five years thereafter. Strictly speaking, therefore, the period during which the Award was binding under the relevant statute has expired. By agreement, however, the parties have accepted its terms. I have, therefore, to scrutinise the relevant

provisions of the said Award and to interpret the same. Chapter XXV of the Sastry Award deals with the "Method of recruitment, condition of service, etc" Paragraph 494 is important and the relevant part thereof is set out below:

494. As regards the demand that no direct recruitment to supervisory and officers' grades should be made it has been urged on behalf of the banks that such directions would be beyond the jurisdiction of the Tribunal. In this connection our attention was invited to the following extract from paragraph 48 of Justice Divatia's Award: "The demand that the officers' and higher posts should be filled in by promotion from among the senior clerks cannot be granted because this Court has no power to make any Award about the selection of men to the officers and higher posts and the dispute is confined to clerks and low paid employees. Without going into the legal position we are of opinion that it is neither necessary nor desirable to impose any such restrictions on the banks. Surely when a new bank is started OT when it opens new branches it needs staff for different types of duties viz. clerical, supervisory and administrative. It is therefore impossible to run a bank if it is not allowed to recruit directly supervisory and administrative staff. Some of the Indian banks are opening branches outside India and consequently, either as a result of legal requirements of the countries in which such branches are opened or otherwise they may have to engage a certain percentage of the staff for such branches from among the citizens of these countries.

6. Chapter XXVII relates to "rules regarding promotions". The relevant rules for our consideration are contained in paras. 528, 529 and 531. These paragraphs must be set out:

528. On behalf of the employees it has been urged (a) posts like those of jamadars and havildars should be filled by promoting other members of subordinate staff and not" by direct recruitment, (b) promotions from lower grade should be on the basis of (seniority, education and special knowledge of banking, (c) those persons of subordinate establishment who have studied upto prematric class should be eligible for appointment in the lower clerical grade, (d) appointments of supervisors, accountants and other officers should be made from among the clerks on the basis of seniority. Some of the employees' unions such as the Central Bank Employees' Association, Bombay, Allepey, Gonda and Madurai want that length of service should be the sole criterion for the purpose of promotions and demand promotion to officers cadre from clerical grades only. The Imperial Bank of India Bombay. Circle Employees' Union put seniority before efficiency, education and special knowledge of banking for the purpose of promotion. Some unions have suggested that promotions should be made in consultation with them. While the banks are generally prepared to agree to seniority in service, educational qualifications and special knowledge of banking all of them being regarded as main considerations for promotion, they attach great importance to efficiency and character in this connection and press that it should be left to the management to give proper weights to the various factors.

529. We do not think that any hard and fast rules can be laid down in connection with promotions. We are definitely opposed to the suggestion that employees' unions should be consulted in connection with promotions. It cannot be supported on principle. We do not think that such consultation is likely to be helpful either. While there is no doubt that seniority in service should be one of the most important factors to be taken into account for the purpose, we are unable to agree that mere length of service alone irrespective of efficiency, educational qualifications, character and nature of responsibility required in connection with the vacancies to be filled in should be the sole or even the main criterion for promotion. Promotion is certainly not a matter which could be made automatic and a great deal of discretion by its very nature must rest with the management in this connection. It is not only difficult but very undesirable to lay down any one single principle for the exercise of this discretion. In our opinion there must be cases of employees in the banking industry as elsewhere in which efficiency of some employees does not necessarily improve with, mere length of service. Nor do all employees in all cases show capacity for work involving higher responsibilities. The apprehension of the employees underlying the demand for length of service to be the sole governing factor for promotion, may be due to apprehensions of nepotism and victimisation of employees who take active interest in the trade union movement. No substantial proof in support of the apprehension has been laid before us and such cases, if any, can only be dealt with in other ways or as provided by law. We however direct that even when direct recruitment to particular posts is decided "on, deserving men already in service who come up to the required educational qualifications should also be enabled to compete for such recruitment by a reasonable relaxation" of the rules relating to age and other restrictions if any. We further direct that in the case of employees who are not found fit for promotion the decision should be borne out by service records of the employees and that when a person senior in service is superseded it should be for good and cogent reasons. We recommend that such an employee should have the right to appeal to the General Manager or the Managing Director who should consider the appeal with an open mind and revise the decision if necessary and that such appeal should not be treated as an act of indiscipline on the part of the employee by the officers under whom he may be working.

531. As regards the demand for promotions to the supervisory and officers' grades it has been urged on behalf of the banks that it is beyond the scope of the jurisdiction of this Tribunal. We do not consider it necessary to deal with the legal aspect of this question as we find that in actual practice a large number of the present officers of the banks except perhaps in the case of the exchange banks are persons who had been promoted from the clerical grade. In this connection our attention was invited to the fact that no less than 1,004 out of 1,165 officers working in the Central Bank of India Ltd. are persons who started their career as clerks. In the case of the Bank of Baroda Ltd. the number of such officers was stated to be 149 out of 334. We were told that probationary assistants were

recruited for promotion to the officers" grade and they were given intensive training in the different departments of the bank for a period of about three years. While it is true that the percentage of officers in the exchange banks who have been promoted from the clerical cadre and who are entrusted with the work of real responsibility is comparatively small, we understand that steps are being taken to accelerate promotions from clerical grade to supervisory and officers" grades. We hope that the exchange banks also will in their own interests as well as those of their employees provide wider opportunities for promotion of the senior clerks to responsible posts.

7. As regard para. 494, it will be observed that it does not lay down any rule but rather rejects a demand on behalf of the workmen that officers" and higher posts should be filled in by promotion from amongst the senior clerks and not by direct recruitment. Reasons have been given for rejecting the demand. It has been pointed out that a bank may need staff for different types of duties and it would not be possible to run a bank if it is not allowed to recruit directly its supervisory and administrative staff. Paragraphs 528, 529 and 531 lay down rules regarding promotion. Paragraph 528 commences by laying down several demands made on behalf of the employees. They are as follows:

(a) Posts like those of jamadars and havildars should be filled by promoting other members of subordinate staff and not by direct recruitment.

(b) Promotions from lower grades should be on the basis of seniority, education and special knowledge of banking.

(c) Persons belonging to the subordinate establishment who have studied upto prematric class should be eligible for appointment in the lower clerical grade.

(d) Appointments of supervisors, accountants and other officers should be made from among the clerks on the basis of seniority.

(e) Some employees" unions demanded that length of service should be the sole criterion for the purpose of promotion.

(f) Some employees" unions demanded that promotion to officers" cadre should be made from the clerical grade only.

(g) Some of the employees" unions demanded that seniority alone should count, even before efficiency, education and special knowledge of banking, for the purpose of promotion.

(h) Some of the employees" unions demanded that promotion should be made in consultation with them.

8. Paragraph 528 merely lays down these contentions but without providing a solution. The solutions are to be found in the subsequent paragraphs. Paragraphs 529 to 531 may be summarised as laying down the following rules regarding promotion:

(1) Employees' unions need not be consulted in connection with promotions.

(2) Seniority in service should be one of the most important factors to be taken into account for the purpose of promotion, but it is not the only factor to be taken into consideration. The other factors to be taken into consideration are: efficiency, educational qualifications, character and the nature of responsibility required in connection with the vacancies to be filled in.

(3) There is to be no such thing as an automatic promotion.

(4) A great deal of discretion shall rest with the management in the matter of promotion. No single principle can be laid down for the exercise of this discretion.
"

(5) Particular posts may be filled in by promotion or by direct recruitment where found necessary. But where direct recruitment is decided upon, deserving men already in service who come up to the required educational qualifications should also be enabled to compete for such recruitment and for that purpose rules regarding age and other restrictions, if any, may be relaxed. In such a competition, in the case of employees who are not found fit for promotion, the decision should be based on their service records.

(6) When a person senior in service is superseded, it should be for good and cogent reasons. In such a case, the employee superseded shall have the right to appeal to the General Manager or the Managing Director and such appeal shall not be treated as an act of indiscipline on the part of the employee concerned.

(7) Members of the subordinate staff as are sufficiently literate and intelligent should be considered for promotion to the clerical grade and no precondition of having passed the matriculation examination or studied up to the pre-matric class is necessary to be imposed.

9. It must be pointed out here that para. 531 really does not lay down any rule. It merely relates the demand for promotion to the supervisory and officer's grade. It was argued before the Tribunal that it was beyond the scope of its reference. This point was not decided. On the other hand, only a pious hope was expressed that the banks would in their own interests provide wider opportunities for promotion of senior clerks to responsible posts.

10. On behalf of the Petitioner, Mr. Chowdhury has argued that para. 528 contains certain representations made on behalf of the employees. So far as promotion from the clerical grade to the posts of officers and supervisors is concerned, that is to be found in Clause (d) and this demand has been dealt with in para. 531 which as mentioned above, has decided nothing and laid down no rule, except expressing a pious hope. I must admit that the paragraphs in the Sastry Award have not been really framed with a view to making each paragraph a concrete rule which could be enforced in a Court of law. Some of the paragraphs merely set out the demands of the parties or reasons why such demands can or cannot be accepted. Some of the paragraphs merely express a

pious hope which, of course, cannot be said to be rules enforceable by a writ. It is, however, not correct to say that the question of promotion from the clerical posts to the supervisory and officers' grade is only dealt with in para. 531. Paragraph 529 lays down the general principles to be observed. This view is supported by a decision of the Supreme Court *Punjab National Bank v. Their Workmen* Supra (p. 13). Gajendragadkar, J. (as he then was) said as follows:

Paragraph 529 of the award dealt with the problem of promotions. The award stated that it was not possible to lay down any hard and fast rule in connexion with promotions. It rejected the suggestion of the employees' Unions that they should be consulted in connexion with promotions, because it was satisfied that such suggestions were not supportable on principle. It was agreed that promotion could not be treated as a matter which could be made automatic and a great deal of discretion by its very nature must rest with the management in that connexion. Even so, in the said paragraph the award made certain general recommendations which may be borne in mind by the management in dealing with cases of promotion.

11. It is clear that in the present case these general principles laid down in para. 529 and the succeeding paragraphs contain the rules regarding promotions which must be followed generally. It is, therefore, necessary to see whether the Tribunal, in coming to its decision, has applied them correctly. Coming to the Award, the Tribunal has first of all stated the facts. I shall presently deal with the question as to whether the Tribunal took proper notice of the evidence upon the record. This being an application for the issue of a writ of certiorari, mere want of appreciation of the evidence would not be sufficient to quash the award. There must be an error apparent on the face of the record, if it is to be quashed. Upon an examination of the Award, I find that the entire approach of the Tribunal has been based on a misappreciation of the facts and of the law. If this appears on the face of the Award, then, of course, the Award cannot stand. The Tribunal first of all deals with the preliminary objection that u/s 7A of the Industrial Disputes Act, the Government could refer for adjudication to an Industrial Tribunal any "industrial dispute" relating to any matter which is specified in the second or the third schedule of the Act. It was argued that in neither of the schedules the question of appointment and promotion was mentioned and hence no reference could be made for adjudication upon such point to a Tribunal. This point, however, has not been agitated before me and I need not consider it. It was next urged that the provisions of para. 529 of the Sastry Award were merely recommendatory and not mandatory and could not be enforced. With the latter point the Tribunal rightly disagreed. I have myself held above that the rules contained in para. 529 of the Sastry Award were not merely recommendatory. The Tribunal proceeded to hold that the dispute in question was not one of direct recruitment but of promotion. This also is partially true. It was a case of direct recruitment, but under the provisions of the rules contained in para. 529 the existing employees in the clerical cadre had to be given a chance. For them it would be a question of promotion. Having held that the case was one of

promotion and not of direct recruitment, the Tribunal lays down the proposition that

It can be taken to be one of the terms of employment that a person who is fit would be promoted or at any rate would not be superseded by the promotion of a junior person.

He speaks of this as a general proposition to be applied to all cases. There is no such general proposition. In other words, there is no general proposition that, in all kinds of employment, it is at all times and under all circumstances an implied condition that all persons fit to be promoted shall be promoted and shall not be superseded by the promotion of a junior person. The learned Advocate, on behalf of the contesting Respondents, concedes that this proposition has not been rightly laid down. Such a term must come into existence by an agreement between the parties or by an award. Later on, the Tribunal does mention that the principle is incorporated in the Sastry Award which is binding on the parties. That is a proposition, which I can understand and in view of my findings, may be said to be correct to an extent I do not know, however, to what extent the mind of the Tribunal was coloured by the erroneous view that in all kinds of industrial employment this principle must be read into the terms and conditions of employment, whether the parties agreed to it or not. The next fundamental mistake in the approach made by the Tribunal in the solution of the disputes referred to him is the mistaken notion that it was primarily the duty of the Tribunal itself to consider and decide the question as to whether, in a given case, one employee was better suited for promotion than another. Evaluating the respective merits of the contestants, the Tribunal constantly uses the expression "we find". This is not in accordance with the law on the subject. For that, it is necessary to refer back to the principles embodied in the contents of paras. 528 to 531 of the Sastry Award. In para. 529, the contents of which have been analysed above, it has been expressly laid down that promotion was not a matter which could be made automatic and a great deal of discretion, in its very nature, must rest with the management in this connection and that it was not only difficult but very undesirable to lay down any single principle for the exercise of this discretion. The Tribunal has entirely overlooked the proposition that the use of the discretion rested not with him, but with the employer. If the employer who is carrying on a business uses his discretion bona fide and in accordance with the principles laid down in the rules, it is not for the Tribunal itself to evaluate the respective qualifications of the workmen concerned and come to the conclusion as to whether a particular Workman was best suited for a specified job. In fact, the way that the Tribunal considers the evidence and forms his own conclusions, shows that he is entirely indifferent to the rights of the employer granted by the Sastry Award.

12. Although comparisons have been made between various clerks, the main subject-matter of discussion was, as it, also is before me, the question of the supersession of K.G. Das by A.K. Sen Gupta. Having set out their respective

merits, as it appeared to him, the Tribunal says:

In spite of this, he (No. 6) was not selected for promotion. No reasons have been given at any time as to why he was not selected.

He then proceeds to say:

Not only are no good and cogent reasons given for superseding this clerk, but no reasons have been given at all. No reasons have been given in the written statement before the Tribunal at the time of conciliation proceedings and no reasons were given even when the Calcutta office wrote to the head office for approval.

Speaking about the evidence given by Mr. Thomson, Manager of the Bank, the Tribunal says that:

He has tried to justify the selection of clerk at serial No. 29 (A.K. Sen Gupta) though he was very junior, but even then he has not given a single reason as to why the clerk No. 6 namely K.G. Das was not selected.

13. This is all incorrect. I shall presently show that reasons have been given at every stage and the reasons are such as ought to have been seriously considered. I might mention here that the Tribunal also looked into the service records and then concludes as follows:

If with this background we find the clerk superseded for no cogent or good reasons and actually with no reasons being given at all, the only inference that can be drawn is that his trade union activities must have been the reasons for his supersession.

14. Apart from the fact that reasons have been given, the Tribunal overlooked the fact that there was no evidence of victimisation at all. The mere fact that K.G. Das was at one time a member of the trade union is not sufficient to establish a case of victimisation. He has come to the conclusion on mere surmises. Lastly, while dealing with the qualification of Sen Gupta, the Tribunal disagrees that he was of "outstanding merit" as found by the employer. The Tribunal did not think so. In my opinion, this is entirely a wrong approach to the question.

15. The Tribunal says that no reasons had been given at any time for the alleged "supersession". Let us see whether this was a correct approach to the question. The Tribunal looked into the service records of these two employees, namely, K.G. Das and A.K. Sen Gupta. These service records are on the file and copies thereof have been annexed to the affidavit of Mr. Thomson affirmed on January 15, 1964. It will be remembered that Sen Gupta since his induction into the employment of the Bank worked in the Savings Deposits Account section. I set out below the relevant entries in his service records.

1st Report

Attitude towards customers, officers, fellow workers ... Very good

Willingness ... Very good

Neatness ... Very good

Interest shown in and aptitude for work ... Very good

Efficiency ... Well above average

Appearance and character ... Good

Brief report on his work throughout the year and other relevant remarks Has worked extremely well during his first months with the Bank and has exhibited an intelligence and capacity to grasp procedures well above those of any other clerk on the establishment. His promotion should be made as rapid as possible and every opportunity taken to give him experience in all aspects of the Bank's work.

Recommendation ... Scale increase plus one additional.

2nd Report

Brief report on his work throughout the year and other relevant remarks This clerk has worked extremely well during his first month's service. He is very willing and should prove to be an asset to the Bank. He has a good appearance and his attitude towards customers, officers, fellow workers is satisfactory.

16. I now come to the entries in the service record of K.G. Das. I find that he has been in the Bank's employment for quite a long time, but he worked in branches other than Savings Deposits Account section, e.g. Clearing and Collection sections of the Cash Department, Securities and income tax and Inward Bills. There are entries to the effect that he has a sound knowledge of all sections and is an able and willing worker, but there are also the following entries:

October 1956 ... Intelligent clerk: should show more zeal.

October 1957 ... Capable, but not giving of his best, probably because he is involved in union matters.

April 1958 ... Intelligent and can work well when he wishes has worked better this half year.

April 1959 ... An intelligent clerk and a good worker but output is poor tries to avoid work being pre-occupied with other matters.

October 1959 ... Intelligent and capable worker but union activities take much of his time and attention.

Brief report on his work throughout the years and other relevant remarks ... Was transferred to this department in July, 1960, from Inward Bills Dept. assisted in Fixed Deposits for about six months. Tends to be slow at his work, which he does

methodically.

17. I now come to the conciliation proceedings. The report of the conciliation proceedings is annex. "D" to the petition. Speaking about the evidence given by Mr. C. McCulloch it was stated as follows:

He stated that Sri Asoke Sen Gupta had a brilliant academic career and is a gold medalist. During the course of his one year of service, Sri Sen Gupta impressed upon the Manager of the Bank about his (Sri Sen Gupta's) resourcefulness, ability and initiative. The management judged him to be a man of responsibility and character which are so very necessary for an officer. Moreover, Sri C. McCulloch stated, the management wanted youngman of ability to be promoted to the rank of assistant officer in preference to older people. In case of Sri K.G. Das it was found that he lacked some of the qualities found In Sri Sen Gupta.

18. On February 1, 1962, the Bank gave a reply to the conciliation report a copy of which is annex. "E" to the petition. It was, inter alia, stated as follows by Mr. Thomson, Manager of the Bank:

(i) Since para. 529 of the All India Industrial Tribunal (Bank Disputes) Award states, inter alia, that length of service should not be the sole or even the main criterion for promotion the responsibility for which by its very nature must rest with the management, we are unable to agree that any violation of the above Award has taken place.

(ii) Consideration was given to the length of service, seniority, ability, character, academic and other qualifications of all Applicants for the post of assistant officer,...it is necessary that recruitment in an organisation such as ours be phased according to a planned programme and that young men of exceptional ability be promoted as well as older and more experienced clerks.

19. I now come to correspondences had between the Bank with its head office to which reference was made by the Tribunal itself. What the Bank was writing to the head office was that the volume of business in the Savings Accounts department was increasing at the Chowringhee sub-branch and that the staff had to be augmented and the Bank had a young man (A.K. Sen Gupta) who was most suitable for promotion to the rank of a probationary assistant officer. It was reported to the head office that although Sen Gupta had worked in the Bank only for 11 months he had shown that he had possessed ability and commonsense and with further experience he should develop into a most useful officer. He was well spoken and had a very good appearance. The London office has eventually approved of the appointment. I now come to the evidence given by the Manager of the Bank, Mr. Thomson. He deposed that in response to the notice calling for applications thirty applications had been received from the clerical staff. The Accountant selected ten of them and Mr. Thomson went through the records of all the thirty Applicants in consultation with the Deputy Manager and agreed with the view of the Accountant. Out of ten so recommended he chose four. He says as follows:

When originally Serial 29, A.K. Sen Gupta was recruited as a clerk, I had in mind that he may later on be appointed as probationary Assistant Officer because we so often select persons in that way. He was selected as a clerk in the normal way on merits. There was nothing unusual about his appointment nor was he selected because of any recommendation made by anyone nor because of his being connected with any person of influence. He was selected as a probationary Assistant Officer on merits, because I had found his work extra-ordinarily good and I selected him as such in the ordinary way only on merits and not on any other extraneous consideration. I selected the above four persons as I considered them most suitable looking to my requirements. It was only on merits looking to their work, initiative, that I selected them.... It is not true to say that any of the thirty Applicants was not selected because of his union activities. A person's union activities had nothing to do with my selecting the person and I made the selection solely on merit without considering any one's trade union activities. Shri K.G. Das, sl. No. 6, is a member of the union and was at one time secretary thereof; but he had sometime prior to the present selection told me that he was resigning the secretary ship of the union as he wanted to devote more time to imparting education to his children. He has since been promoted as chief clerk in one of the departments from 1.11.1961.

20. In cross-examination he said as follows:

So far as Shri Sen Gupta is concerned, we wanted a young man and he was of outstanding merit. When he appeared for the examination when we recruited clerks, we found him to be of outstanding category.

21. Before I conclude I must refer to a letter which is on the record written by the Bank to its head office at London dated June 27, 1961. In that letter several clerks were being recommended for promotion. About N.N. Manna, who is one of the clerks who have been promoted and in respect of whom there is no dispute, the following statement was made:

Nirmal Chandra Manna is 46 years of age and was appointed as clerk in June, 1935. For many years he has been deputy chief clerk in the Current Accounts department where he is regarded as the logical successor to the chief clerk. Reports on his work, intelligence and loyalty have been consistently good. He is an office bearer in our employees union and in this capacity his quiet but authoritative manner has won the respect of both management and staff.

22. I have mentioned above that the Tribunal proceeded on the footing that the so called "supersession" of K.G. Das by A.K. Sen Gupta took place without any good and cogent reasons and that no reasons had been given either in the written statement before the Tribunal, or at the time of the conciliation proceedings or in the correspondence between the Calcutta office of the Bank and the London head office. Finally, he says that even the Manager Mr. Thomson did not give a single reason for the supersession. These statements are all incorrect. Reasons had been given at every stage. In this background, I shall

now proceed to consider whether the Tribunal has correctly applied the test which has been laid down in the "Sastry Award". That K.G. Das is senior in service cannot be disputed. It has, however, been laid down by the Sastry Award that-seniority alone is not everything. The other factors are efficiency, educational qualifications, character and the nature of responsibility required in connection with the vacancies to be filled in. It has also been laid down that a great deal of discretion must rest with the management in the matter of promotion. It will be remembered that in this particular case, the correspondence between the Bank and the London head office shows that the Savings Bank department in the Chowringhee sub-branch was being rapidly expanded. It was, therefore, necessary to have an officer who would be capable of dealing with it. The Bank wanted a young man of exceptional ability, a man with personality and character, to deal with this welcome expansion in its Savings Bank department. Once it is conceded that in such matters discretion lies primarily with the management, It follows as a corollary that it is for the management to come to the conclusion as to whether a person is suitable for being appointed to a particular job in the background of what performance is expected from him and to make an appointment which will be of the maximum benefit to the employer's business. If this discretion has been exercised honestly and keeping in view the various directions mentioned in the Sastry Award, then it is not for the Tribunal to substitute its own opinion in the place of the management. This is exactly what the Tribunal has attempted to do in the instant case. The management of the Bank wanted a young man of ability and efficiency suitable for dealing with the expansion of its Savings Bank department and it thought that A.K. Sen Gupta satisfied their requirements, while K.G. Das did not. So far as the educational qualification is concerned there is not very much to choose between the two. Both are B.Com. of the Calcutta University. At the relevant time, Das had passed Part I of the Indian Institute of Bankers' Examination and Sen Gupta had appeared in the first part, which he has subsequently passed. Sen Gupta had passed the Government Commercial Course Final Examination with gold medal for economics. He was also appearing for the final part of the examination of the Corporate Secretaries, London. Therefore, so far as the educational qualification is concerned, there is very little to choose between the two contestants. The entries in the service records show that A.K. Sen Gupta got some superlative remarks. Not only were the remarks made about his intelligence and capacity being "above those of any other clerk on the establishment", but remarks were made about his good appearance, his attitude towards customers, officers, etc. and it was stated that he had made an impression upon the management about his resourcefulness, ability and initiative. It was stated that the management judged him to be a man of responsibility and character which were so very necessary for an officer. Coming to K.G. Das it was found that he was certainly intelligent and capable but he was not always giving his best to the work of the Bank. He was found slow at his work and tried to avoid doing too much of it, owing to his other preoccupation. As I have stated above, the management wanted a young man of character and ability for the expansion of its Savings

Bank department. Sen Gupta was inducted into the Bank in that department, had a good experience of it and acquitted himself most brilliantly. If the management thought that this was the man they wanted for the expansion of their Savings Bank department, how can it be said that they had exercised their discretion dishonestly or in disregard of the tests laid down in the Sastry Award? Under that Award, "a great deal of discretion" rested with the management. This discretion, in my opinion, has been exercised in the present case honestly and with due regard to the tests laid down by the Sastry Award. At best, we find that there were two contestants, one of whom had seniority and had comparable or even slightly superior educational qualifications, but was also slow and a person without initiative. On the other hand, there was a young man who had special knowledge of the particular branch for which an officer was required and although he was comparatively junior, he had a comparative educational qualification and his ability, character, initiative and other factors were immensely superior. Can it be said that in choosing him, the Bank had exercised its discretion dishonestly or in disregard of the tests laid down by the Sastry Award? In my opinion, it would be erroneous to hold so and that the Tribunal has fallen into an error in thinking that the discretion has not been exercised properly. In fact, the Tribunal did not consider the matter from the true angle at all. He stated some of the facts and much of that wrongly and then started to give his own opinion as to who was the better candidate. He does not say that according to the tests laid down by the Sastry Award, K.G. Das was a better candidate. He says, "We find" K.G. Das to be a better candidate. This approach is entirely erroneous and not in accordance with the law. I now come to the question of victimisation. If the so-called "supersession" was the result of victimisation then, of course, it may be said that the discretion has not been honestly exercised. Upon a very superficial examination of the evidence the Tribunal has held that inasmuch as K.G. Das had sometimes been the secretary of the trade union, he was superseded as a result of victimisation. I have pointed out in *National Tobacco Co. of India Ltd. and Others Vs. Fourth Industrial Tribunal and Others*, , that victimisation can mean one of two things. The first is where the workman concerned is innocent and yet he is being punished, because he has in some way displeased the employer, for example, by being an active member of a union of workmen who were acting prejudicially to the employer's interest. The second case is where an employee has committed an offence, but he is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer in being a member of such a union. In this case, there is absolutely no evidence to satisfy either of these two tests. The service records show that K.G. Das had been slow in his work because he was preoccupied with his union activities. It has nowhere been alleged that these, periodical comments were made untruly or dishonestly. Mr. Thomson, the Manager of the Bank, was examined and cross-examined on this point, but he has stuck to the answer that the non-inclusion of K.G. Das in the list of appointees had nothing to do with his trade union activities. In fact, K.G. Das had expressed a desire to stop all his union activities so that he could devote

more time to the education of his children. There is no evidence at all to show that K.G. Das was guilty of any particular trade union activity which embarrassed the Bank. The attitude of the Bank towards the activities of the union of workmen has been quite normal. It is for that purpose that I have, set out above the statement made to the London office in respect of Nirmal Chandra Manna. The fact that Manna was an office-bearer in the union was held in his favour rather than against him. His work in that capacity was taken as a recommendation for his selection for promotion. Therefore, there is nothing on record to show that the non-inclusion of K.G. Das's name in the list of appointees was in any way a result of his trade union activities in the past. The reasoning of the Tribunal upon this point is as follows: Mr. K.G. Das, at one time was the secretary of the union; he has been superseded. Therefore, there is vicitimisation. This reasoning is neither logical nor in accordance with law and cannot be upheld. Although, throughout the hearing of the case, the contesting Respondents took up the position before me that the only point to be considered was the supersession of K.G. Das by Sen Gupta, Mr. Dutt at a late stage introduced the argument that the supersession of K.G. Das by Panchu Gopal Dey and P.K. Bhattacharya should also be taken into consideration. In my opinion, this point also has no legs to stand on. So far as Panchu Gopal Dey is concerned, he had much higher educational qualifications and he was actually drawing a higher salary than K.G. Das and had already become head clerk. So there is no question of supersession at all. So far as P.K. Bhattacharya is concerned, there was not much difference in seniority or pay between him and K.G. Das. At the relevant time, however, Bhattacharya had passed both parts of the Indian Institute of Ban